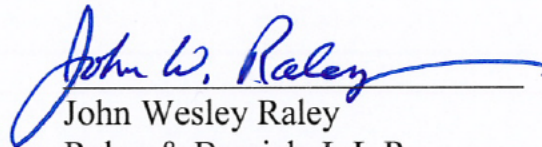


**REPORT OF SPECIAL PROSECUTOR JOHN RALEY
TO DISTRICT ATTORNEY KIM OGG
REGARDING ALFRED DEWAYNE BROWN**

March 1, 2019

SPECIAL PROSECUTOR



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I. INTRODUCTION

I, John Wesley Raley, have been appointed a Special Prosecutor by the Harris County District Attorney's Office to investigate the role, if any, of former death row inmate Alfred Dewayne Brown in the April 3, 2003 murders of Ms. Alfredia Jones and Houston Police Officer Charles Clark. I have also been requested to perform an independent analysis of Mr. Brown's claim of "actual innocence" regarding the crime for which he was convicted, and present findings and recommendations based on available evidence.

The investigation of the Brown case has been extremely labor-intensive, requiring hundreds of man-hours. The Special Prosecutor's team reviewed lengthy prior police reports and multiple, often contradictory witness statements (including audiotapes) of 38 witnesses, two jury trials (including Elijah Joubert's trial), an extensive appeal process, a post-appeal re-investigation by the DA's office, investigations by Brown's civil and criminal defense teams, an investigation by the Harris County Attorney's Office, and another recent investigation by the HPD. The Harris County Attorney's Office, which currently possesses the voluminous case files, forwarded PDFs to us consisting of over 70,000 pages of documents.

The groundwork required before the final report could be written was extensive. We reviewed all available evidence, including all witness statements that could be gleaned from many different source locations, created indexes of all witnesses, and consolidated timelines using available phone records and known locations and distances. After the evidence was organized, we read and re-read much of the source material as our understanding of the case developed. We returned to the evidence frequently as the report was written so that we could be assured of our conclusions. Finally, we applied the law to the facts.

II. CASE BACKGROUND

Procedural History

On April 3, 2003, between 9:39 a.m. and 9:46 a.m., Ms. Alfredia Jones and Officer Charles Clark were fatally shot during an attempted armed robbery of ACE America's Cash Express, 5700 South Loop East, Houston, Texas 77033. Three men were indicted for the crimes, Dashan (sometimes spelled "Dashon," "Deshon," or "Deshan") Vadell Glaspie, Elijah Dwayne Joubert, and Alfred Dewayne Brown.

Dashan Vadell Glaspie received a lighter charge and sentence as a plea agreement in exchange for his cooperation as a State's witness against the other two men. He is currently serving a 30-year aggravated robbery sentence. He will be eligible for parole review in 2020.

Elijah Dwayne Joubert was convicted of capital murder for the death of Ms. Jones in October, 2004, and was sentenced to death. He remains on death row awaiting execution.

Alfred Dewayne Brown was indicted for capital murder for the death of Officer Clark. Assistant District Attorney Daniel Rizzo was the lead prosecutor. Brown was convicted on October 18, 2005, in the 351st District Court of Harris County, Texas (Honorable Mark Kent Ellis presiding). The death penalty was assessed on October 25, 2005. Brown moved for new trial on November 28, 2005, and his motion was denied on January 4, 2006. The Texas Court of Criminal Appeals affirmed Brown's conviction on September 24, 2008, and subsequently denied Brown's motion for rehearing. Brown was sent to death row, awaiting execution.

Brown has consistently maintained his innocence, stating that at the time of the crime he was in the apartment of his girlfriend Ericka Dockery. He said that Ericka Dockery's nephews (Reginald and Ruben Jones) were in the apartment with him at the time.

On October 27, 2007, Brown filed a post-conviction habeas petition alleging the State violated its duty to disclose exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and error in the State's failure to admit into evidence the complete cell phone records used at trial.

In 2008, during its habeas investigation, the State confirmed that some of the records used during HPD Officer Breck McDaniel's testimony regarding cell phones were not admitted into evidence. The State's file did not contain the complete records. The habeas prosecutor obtained by subpoena the cell phone records of Glaspie and Joubert.

An evidentiary hearing on Brown's habeas petition was scheduled for spring of 2013. Brown's counsel announced they would call an expert regarding cell phones. In preparing for the hearing, ADA Lynn Hardaway spoke to McDaniel regarding the phone evidence on a number of occasions, and McDaniel was subpoenaed to testify at the upcoming writ hearing.

During one of his conversations with Hardaway, McDaniel volunteered that he might have some materials from the Brown case in a box stored in his home garage. He searched, located a box of materials from the case, and brought the box to Hardaway on April 9, 2013. A copy was immediately produced to Brown's counsel. The records in the box included Ericka Dockery's landline phone records, which show a **10:08 a.m.** call on 4/3/2003 from Dockery's apartment to Dockery's place of employment (Ms. Alma Berry). [Dockery testified before the Grand Jury and during Brown's trial that around 10:00 a.m. Brown called her at Ms. Berry's house, and that Caller ID indicated the call came from Dockery's apartment.]

A search confirmed that Dockery's landline records were not located in either the prosecution file or the HPD homicide file. They had not been seen by the habeas prosecutors prior to their production by McDaniel. The defense trial counsel stated

that they had never seen them before. In light of these facts, the State agreed that Brown was entitled to a new trial based on *Brady v. Maryland*, 373 U.S. 83 (1963).

Agreed Findings of Fact and Conclusions of Law, signed by Judge Ellis of 351st District Court on May 28, 2013, stated several times that the State's withholding of the Dockery landline records from production to the defense was not intentional. The Findings of Fact stated the following:

31. The State's *inadvertent* failure to disclose Dockery's phone records to the defense at the time of trial was not a matter of bad faith.

*

*

*

34. Although the State's failure to disclose the Dockery phone records to trial counsel was *inadvertent* and *not in bad faith*, the applicant's claim meets the requirements of *Brady*.

(Emphasis added).

Similarly, the Agreed Conclusions of Law stated the following:

1. Based on the State's *inadvertent* failure to provide trial counsel with the Dockery phone records, the applicant satisfies the tenets of Brady...

(Emphasis added). Regardless of the "inadvertent" qualifiers, the Agreed Findings concluded that the State had withheld exculpatory material evidence in violation of Brown's constitutional rights.

It is fully understandable why Brown's counsel would agree to the "inadvertent" language. They wanted their client out of prison, and at the time had no way of knowing whether the failure to disclose the Dockery records was intentional. The language may have been proposed by the State because of the affidavit signed by ADA Daniel Rizzo on 3/31/2012, before the discovery of the copy of the Dockery records in Officer Breck McDaniel's garage. ADA Rizzo

testified as follows: “*I did not suppress knowledge of or information about a land-line [sic] call from Ericka Dockery’s apartment to Alma Berry’s house.*” State’s Writ Exhibit A. [At this time, the prosecutors who were working on the Brown case, including ADA Lynn Hardaway, were unaware of the April 22, 2003 email from McDaniel to Rizzo discussed below.]

On November 5, 2014, the Texas Court of Criminal Appeals issued an order vacating Brown’s conviction and sentence, and remanding the case to the trial court. As part of its Opinion, the appellate court ruled: “Based on the habeas court’s findings and conclusions and our own review, we hold that the State withheld evidence that was both favorable and material to applicant’s case in violation of *Brady v. Maryland*, 373 U.S. 83 (1963)” (emphasis added). Thus, the State’s highest criminal court held that the State violated Brown’s constitutional rights by failing to turn over evidence supporting Brown’s alibi.

The HPD and HCDAO conducted a re-investigation of the crime. On June 8, 2015, the 351st District Court of Harris County, Texas granted the State’s motion to dismiss the case against Brown. Later that day, Brown was released from custody after over 12 years behind bars, including more than 9 years on death row. Devon Anderson, Harris County District Attorney at the time, said: “***We cannot prove this case beyond a reasonable doubt, therefore the law demands that I dismiss this case and release Mr. Brown.***” Houston Chronicle, June 8, 2015. Although her public statement is close to the legal standard for “actual innocence,” DA Anderson did not express any specific opinions regarding whether Brown is “actually innocent” as a matter of law during the remainder of her term.

Assistant District Attorney Dan Rizzo

On **April 21, 2003** (18 days after the murders), Ericka Dockery testified before the Grand Jury. Brown's prosecutor, Assistant District Attorney Daniel Rizzo, was present during her testimony. Dockery testified that on the morning of the crime, while working at Alma Berry's house, she called home and talked to her nephew Reginald Jones, who told her that Brown was upstairs. HC/BROWN-08696-97. She also testified that around 10:00 a.m., while at work, she received a telephone call from her apartment made by Brown. HC/BROWN-08697 & HC/BROWN-08701. [Note: "HC/BROWN" denotes the Bates stamp number for documents in Harris County's possession.] Dockery testified that Alma Berry answered this phone call, looked at Caller ID, and handed the phone to Dockery while saying "Ericka, it's your house." HC/BROWN-08701.

Three days later, on **April 24, 2003**, ADA Rizzo filed an Application and form of Order with the 351st District Court to obtain the landline phone records of Dockery's apartment from Southwestern Bell. The Application signed by ADA Rizzo contended that the phone records of Dockery's landline were "material to the investigation of a criminal offense." The form of Order signed by ADA Rizzo was entered by the Court. However, no phone records from Ericka Dockery's apartment were ever produced to Brown's defense attorneys or used by ADA Rizzo as trial evidence.

[The copy of the Dockery phone log found in McDaniel's garage in 2013 confirmed the existence of a **10:08 a.m.** phone call on April 3, 2003 from Ericka Dockery's apartment to Alma Berry's house, where Dockery was working at that time. This evidence directly corroborates testimony before the Grand Jury (and during Brown's trial) that Ms. Berry, who answered the phone, recognized Dockery's number on Caller ID and told Dockery "Ericka, it's your house" before handing the phone to Dockery. HC/BROWN-08701.]

In responding to discovery requests in Brown's 2017 civil suit,¹ Assistant District Attorneys serving under current District Attorney Kim Ogg found an email dated **April 22, 2003** (one day after Dockery's Grand Jury testimony and two days before ADA Rizzo's Application) from Officer Breck McDaniel to ADA Rizzo. No one else was copied on the email. In the email, McDaniel requested ADA Rizzo to sign the Application and proposed court Order attached to his email regarding the records of Brown's "girlfriend's apartment's home phone." (McDaniel also referred to Brown by his nickname "Doby.") McDaniel's email to Rizzo noted the urgency of his request: "We need this signed ASAP as *SWB has already provided the records.*" McDaniel asked Rizzo to make sure the proposed documents he attached were correct, adding: "*I specifically want to ensure that the C.C.P. Article quoted is the correct one for this order as I have never done one before.*"

McDaniel's email described for Rizzo the content of Dockery's phone records as follows:

Regardless, I was hoping that it would clearly refute Erica's claim that she received a call at work (residence on Hartwick street) from Doby at about 10:00 a.m. or so from her apartment, thereby, putting him at the apartment as an alibi as the nephews claim. But, it looks like the call detail records from the apartment shows that the home phone dialed Erica's place of employment on Hartwick Street at about 8:30 a.m. and again at 10:08 a.m. Erica claimed that the caller identification at the Hartwick house showed the apartment.

(Emphasis added).

¹ Brown filed a civil suit against the City of Houston, Harris County, Breck McDaniel, Daniel Rizzo, Kim Ogg, Ted Bloyd and D.L. Robertson on June 8, 2017. That matter is pending in the United States District Court, Southern District of Texas, Houston Division, Cause Number 4:17-cv-01749.

Photocopies of Officer McDaniel's April 22, 2003 email to ADA Rizzo, together with its attached draft Application and Order, are below:

From: breckmcdaniel@earthlink.com <breckmcdaniel@iname.com>
Sent: Tuesday, April 22, 2003 4:33 PM
To: rizzo_dan@da.co.harris.tx.us
Subject: Court order on Dobie's Girlfriend's Apartment's Home Phone
Attachments: APP.DOC; ORDER.DOC

Dan,

Here is a copy of the application and order on Dobie's girlfriend's apartment's home phone. Please let us know if the order looks correct and or if further information is needed and please get it signed, or, let us know who can if you are tied up. I specifically want to ensure that the C.C.P. article quoted is the correct one for this order as I have never done one of these orders before. But, I think that the same article will apply! We need this signed ASAP as SWB has already provided the records. Also, I do not know if you knew these records were available. I did not until last Friday and never even knew that they could provide us call detail records for a land line for calls which are not billed individually. However, I think it is a new development.

Regardless, I was hoping that it would clearly refute Erica's claim that she received a call at work(residence on Hartwick street) from Dobie at about 10 a.m. or so from her apartment, thereby, putting him at the apartment as an alibi as the nephews claim. But, it looks like the call detail records from the apartment shows that the home phone dialed Erica's place of employment on Hartwick Street at about 8:30 A.M. and again at 10:08 A.M. Erica claimed that the caller identification at the Hartwick house showed the apartment. Though this is possible, Erica dialed ghetto's cellular phone at 10:26 A.M. and the call connected with the phone at the apartments on Selinsky. Presumably, Erica knew that Dobie was with Ghetto and she called Ghetto's cell phone to reach Dobie.

Breck McDaniel

breckmcdaniel@iname.com

Direct Home: 713-981-8303.
Cellular: 713-254-0574.
Work: 713-308-3656.
Pager/Voice Mail: 800-978-1009.
Work Toll Free: 800 887 5800

IN THE MATTER OF THE
APPLICATION OF THE STATE
OF TEXAS FOR AN ORDER AUTHORIZING
THE RELEASE OF TELEPHONE RECORDS
WITH INCOMING AND OUTGOING CALL
INFORMATION, AND SUBSCRIBER INFORMATION

THE STATE OF TEXAS

THE COUNTY OF HARRIS

APPLICATION

COMES NOW, the State of Texas, by and through her Assistant District Attorney, Dan Rizzo, and hereby request that an Order be signed, pursuant to Art. 18.21(2) Texas Code of Criminal Procedure; requiring the herein named utility to furnish all Verbatim Call Records, including all incoming and outgoing call activity for the listed telephone number. And, to furnish to the Homicide Division of the Houston Police Department, through the below named officer, as soon as practical and at reasonable intervals during regular business hours, for the duration of this Order.

I.

The utility is Southwestern Bell Telephone Company (SBC)

II.

The subscriber is Monca Pickett. The telephone number is 713-649-6385

III.

The location of the instrument is 6969 South Loop East, Houston, TX 77087

IV.

The release of said telephone records are material to the investigation of a criminal offense; supporting information follows:

Said information has been provided to your Applicant by Officer B.C. McDaniel of the Houston Police Department Homicide Division, who has represented to your applicant, that the release of said telephone records is necessary to provide information which may aid investigators in locating, identifying, arresting and/or charging suspect(s). The telephone, which is the target of this Order, belongs to an associate of a suspect arrested by Houston Police Officers for a murder charge in relation to a Capital Murder/Robbery, which happened on Thursday morning, April 3rd, 2003. During this Capital Murder/Robbery, one responding on-duty Houston Police patrol officer and one civilian was murdered. Houston Police arrested a suspect as he exited 6969 South Loop East, Houston, TX 77087, the address that this telephone instrument is located. Therefore, an analysis of the phone's records may lead to other investigative leads.

It is also requested that subscriber information, and all incoming and outgoing call activity be provided for the listed telephone number for the date of April 03, 2003, the date of the offense.

WHEREFORE, PREMISES CONSIDERED, Your Applicant respectfully request that an order, consistent with this Application, be granted. Further, that the utility be ordered not to reveal to anyone that this order exist.

Dan Rizzo
ASSISTANT DISTRICT ATTORNEY
HARRIS, COUNTY, TEXAS

On this the _____ day of _____, 2003, appeared before me the above named applicant, who stated under oath, that the above Application is true and correct to the best of his knowledge.

NOTARY PUBLIC in and for
Harris County, Texas
My commission expires: _____

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INFORMATION, AND SUBSCRIBER INFORMATION

THE STATE OF TEXAS

THE COUNTY OF HARRIS

ORDER

On this the _____ day of _____, 2003 upon proper Application by Dan Rizzo, Assistant District Attorney of Harris County, Texas, attached and incorporated for all purposes, the following is here by ORDERED, to-wit:

That in as much as Southwestern Bell Telephone Company (SBC), will furnish all information, records, and technical assistance necessary to release Verbatim Call records on the telephone number contained in the attached and incorporated Application. It is hereby ordered that Southwestern Bell Telephone Company (SBC), be provided a copy of this Order ordering and ratifying compliance with Art. 18.21 (2) of the Texas Code of Criminal Procedure.

That Southwestern Bell Telephone Company (SBC), conduct a Verbatim Call Search, and provide all subscriber information, incoming and outgoing call activity for the date April 03, 2003.

Also, that Southwestern Bell Telephone Company (SBC), keep confidential the existence of this order, unless and until, this order is superseded by a court of competent jurisdiction.

IT IS FURTHER ORDERED, that any other telecommunications provider such as; AT&T Telephone Company, AT&T Wireless, Verizon Telephone Company, Verizon Wireless, Nextel Communications, Sprint Spectrum L.P., T-Mobile Wireless, Cingular Wireless, Vartec Telecom, MCI Metro Telecom, and any other telecommunications related carrier(s); shall provide officers of the Houston Police Department with telephone/cellular/wireless call detail records for any number(s) which are derived from records pertaining to this Verbatim Call Search, and, that this order will apply to any such number(s). These records shall include customer and subscriber information (listed and unlisted), including customer(s)' service and credit records, and, the name(s) and address(es) of all subscriber(s) to the telephone numbers revealed by the Verbatim Call Search, and/or cellular site information for any listed wireless telephones identified through this search.

SIGNED AND ENTERED on this the _____ day of _____, 2003.

JUDGE
DISTRICT COURT
HARRIS COUNTY, TEXAS

It is fortunate DA Ogg's team was able to locate McDaniel's email to Rizzo,² because it provides crucial information about Brown's prosecution. The Application and form of Order signed and filed by ADA Rizzo on April 24, 2003, two days after receiving the email, are completely identical to the drafts attached to the email by McDaniel – with only one minor exception: deletion of the citation to the Texas Code of Criminal Procedure which had been identified by McDaniel in his email. This is evidence that Rizzo personally read McDaniel's email and acted on it. The most logical interpretation is that Rizzo focused on the exact issue McDaniel referenced, and, after making a single precise change to both documents regarding that exact issue, copied all the other words on each of the four pages of McDaniel's proposed documents (including the section formatting), signed the documents, and made sure they were filed.

Photocopies of the official Application and form of Order signed by ADA Rizzo and filed on April 24, 2003 are below:

² In 2016, the HCDAO IT department located a number of digital linear tapes thought to have been destroyed. The tapes were part of an inactive technology that was used sporadically from the 1990s to approximately 2008 to back up emails and documents saved to the network. Because the technology is outdated and no longer in use, the HCDAO no longer possessed the hardware or software to read the tapes. Initially, it was believed that email evidence in the Brown case had been disclosed or was long ago destroyed. Upon taking office, the Ogg administration authorized payment for "conversion" of that data. The search conducted in Brown's civil case called for production of all communications, and it was this data set that produced the April 22, 2003 email.

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The utility is Southwestern Bell Telephone Company (SBC)

II.

The subscriber is Monea Pickett. The telephone number is 713-649-6385

III.

The location of the instrument is 6969 South Loop East, Houston, TX 77087

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Said information has been provided to your Applicant by Officer B.C. McDaniel of the Houston Police Department Homicide Division, who has represented to your applicant, that the release of said telephone records is necessary to provide information which may aid investigators in locating, identifying, arresting and/or charging suspect(s). The telephone, which is the target of this Order, belongs to an associate of a suspect arrested by Houston Police Officers for a murder charge in relation to a Capital Murder/Robbery, which happened on Thursday morning, April 3rd, 2003. During this Capital Murder/Robbery, one responding on-duty Houston Police patrol officer and one civilian was murdered. Houston Police arrested a suspect as he exited 6969 South Loop East, Houston, TX 77087, the address that this telephone instrument is located. Therefore, an analysis of the phone's records may lead to other investigative leads.


It is also requested that subscriber information, and all incoming and outgoing call activity be provided for the listed telephone number for the date of April 03, 2003, the date of the offense.

WHEREFORE, PREMISES CONSIDERED, Your Applicant respectfully request that an order, consistent with this Application, be granted. Further, that the utility be ordered not to reveal to anyone that this order exist.



Dan Rizzo
ASSISTANT DISTRICT ATTORNEY
HARRIS, COUNTY, TEXAS

On this the 24 day of April, 2003, appeared before me the above named applicant, who stated under oath that the above Application is true and correct to the best of his knowledge.



NOTARY PUBLIC in and for
Harris County, Texas
My commission expires: _____



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OF TEXAS FOR AN ORDER AUTHORIZING
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WITH INCOMING AND OUTGOING CALL
INFORMATION, AND SUBSCRIBER INFORMATION

THE STATE OF TEXAS

THE COUNTY OF HARRIS

ORDER

On this the 24 day of April, 2003 upon proper Application by Dan Rizzo, Assistant District Attorney of Harris County, Texas, attached and incorporated for all purposes, the following is here by ORDERED, to-wit:

That in as much as Southwestern Bell Telephone Company (SBC), will furnish all information, records, and technical assistance necessary to release Verbatim Call records on the telephone number contained in the attached and incorporated Application. It is hereby ordered that Southwestern Bell Telephone Company (SBC), be provided a copy of this Order.

That Southwestern Bell Telephone Company (SBC), conduct a Verbatim Call Search, and provide all subscriber information, incoming and outgoing call activity for the date April 03, 2003.

Also, that Southwestern Bell Telephone Company (SBC), keep confidential the existence of this order, unless and until, this order is superseded by a court of competent jurisdiction.

IT IS FURTHER ORDERED, that any other telecommunications provider such as; AT&T Telephone Company, AT&T Wireless, Verizon Telephone Company, Verizon Wireless, Nextel Communications, Sprint Spectrum L.P., T-Mobile Wireless, Cingular Wireless, Vartec Telecom, MCI Metro Telecom, and any other telecommunications related carrier(s); shall provide officers of the Houston Police Department with telephone/cellular/wireless call detail records for any number(s) which are derived from records pertaining to this Verbatim Call Search, and, that this order will apply to any such number(s). These records shall include customer and subscriber information (listed and unlisted), including customer(s)' service and credit records, and, the name(s) and address(es) of all subscriber(s) to the telephone numbers revealed by the Verbatim Call Search, and/or cellular site information for any listed wireless telephones identified through this search.

SIGNED AND ENTERED on this the 24 day of April, 2003.


JUDGE

208 DISTRICT COURT
HARRIS COUNTY, TEXAS

On May 2, 2003, Officer McDaniel filed a Supplemental Offense Report which states in pertinent part the following:

AFTER SUSPECT GLASPIE'S ARREST, OFFICER MCDANIEL BEGAN TO THOROUGHLY ANALYZE SUSPECT GLASPIE'S AND SUSPECT JOUBERT'S CELLULAR PHONE RECORDS. NOTE, THESE PHONE NUMBERS HAD BEEN OBTAINED THROUGH INVESTIGATION AND THE RECORDS PROVIDED INVESTIGATORS WITH A LARGE AMOUNT OF INVESTIGATIVE DATA.

MORE SPECIFICALLY, OFFICER MCDANIEL WORKED CLOSELY WITH UNITED STATES DEPUTY MARSHAL, SENIOR INSPECTOR R. HUNTER, WHO, ALONG WITH DEPUTY MARSHAL S. LOWENSTEIN, PROVIDED A SUBSTANTIAL AMOUNT OF INVESTIGATIVE ASSISTANCE IN WORKING UP LEADS TO THE SUSPECTS WHEREABOUTS.

OFFICER MCDANIEL'S FURTHER INVOLVEMENT IN THE FOLLOW-UP OF THIS CASE PRIMARY [sic] INVOLVED THE THOROUGH ANALYSIS OF SUSPECT GLASPIE'S AND SUSPECT JOUBERT'S CELLULAR PHONES, OTHER INVOLVED CELLULAR PHONE(S), AND SOME LAND LINES [sic]. THESE RECORDS NOT ONLY HAVE IDENTIFIED PHONE NUMBERS CALLED BY, AND TO, THESE SUSPECTS, BUT ALSO HAVE PHYSICALLY PUT THE PHONES, AND PRESUMABLY THE SUSPECTS, IN CERTAIN APPROXIMATE PHYSICAL LOCATIONS. FURTHER, THE RECORDS IDENTIFY THE DATES, TIMES, AND THE LENGTHS OF THE CALLS. NOTE, COURT ORDERS WERE OBTAINED, AS NECESSARY FROM A.D.A. C. GOODHART AND **A.D.A. RIZZO**.

FURTHER, THE RECORDS REVEAL A NUMBER OF CALLS, PEOPLE, AND LOCATIONS THAT SUSPECTS GLASPIE AND/OR JOUBERT CALLED, OR, RECEIVED CALL(S) FROM. MOST OF THESE NUMBERS WERE TRACED TO THE SUBSCRIBER INFORMATION. **LIEUTENANT ZOCH AND A.D.A. RIZZO WERE BOTH MADE AWARE OF THESE RECORDS AND SOME OF THE PARTIES REVEALED BY THE RECORDS HAVE BEEN TALKED TO, AS NECESSARY, BY DIFFERENT INVESTIGATORS.**

IT SHOULD ALSO BE NOTED THAT OFFICER MCDANIEL NOTIFIED A.D.A. RIZZO OF THE AVAILABILITY OF THESE RECORDS AND THE VAST AMOUNT OF DATA THAT THEY REVEAL. FURTHER, OFFICER MCDANIEL AWAILED HIMSELF TO A.D.A. RIZZO FOR ANY

FURTHER ANALYSIS OF THOSE RECORDS. IT SHOULD BE NOTED THAT MAP(S) CAN BE MADE WHICH SHOW THE APPROXIMATE LOCATION OF THE CELLULAR PHONES AT CERTAIN TIMES. IF NEEDED FURTHER, OFFICER MCDANIEL MAY BE REACHED AT A VOICE MAIL PAGER AT 1-800-978-1009.

OR 2.057-2.060 (All caps in original, other emphasis added). Thus, there is contemporaneous evidence, in addition to McDaniel's 4/22/2003 email, that ADA Rizzo was aware of the Dockery landline phone records and what they meant.

Officer Breck McDaniel

The undersigned interviewed Officer Breck McDaniel to discuss these matters. Officer McDaniel reported that Deputy Marshal Richard Hunter of the U.S. Marshal's Office, Southern District of Texas, originally obtained the Dockery landline phone records from Southwestern Bell without court order as an "exigent situation" when trying to locate the murder suspects. Ms. Kay Bendsen was the Southwestern Bell contact person.

It was the practice of the U.S. Marshal's service to provide Southwestern Bell with a court order. McDaniel does not recall any new records being obtained by the Application. His recollection is that the Application and Order for Dockery's landline records was a formality that Southwestern Bell requested for their file.

Deputy U.S. Marshal Hunter gave the Dockery records to McDaniel. McDaniel made a copy of the Dockery records for his personal use during the investigation. McDaniel then placed the Dockery records given to him by Hunter directly in the Houston Police Department homicide file, which consisted of several boxes stored in Officer D.L. Robertson's office. HPD was expected at some point to make copies of all the records for the Harris County DA's file. Meanwhile, the HPD file was accessible by anyone associated with the prosecution, including ADA Rizzo. There were no records kept of when and by whom the file was accessed.

McDaniel kept his personal copy of the Dockery records in his office until 2010 when he moved office space and no longer had his own office. At that time, he took the Dockery records in a box with other miscellaneous items to his garage at home. He believed he also had personal copies of matters from other cases.

McDaniel recalled that during the writ proceedings of 2013, the Dockery records McDaniel put in the HPD file could not be located either in the HPD file or in the DA file. After searching HPD's offices, McDaniel told Hardaway that he would check his garage for any copies of records he might have. He found the Dockery landline records in a box with other phone records related to the investigation and turned the entire box over to Hardaway. Hardaway immediately produced copies of all the records McDaniel found, including the Dockery records, to Brown's counsel. Why the Dockery records were not in either the HPD file or the DA file remains a mystery. McDaniel said he was cleared of any wrongdoing by the HPD Internal Affairs Division following an investigation which included a written statement by Deputy U.S. Marshal Richard Hunter, in which Hunter attested that he saw McDaniel file the records with the HPD (see summary below).

During his interview, McDaniel confirmed the accuracy of the portions of his 5/2/2003 Supplemental Offense Report quoted above. He is confident that ADA Rizzo read his 4/22/2003 email and acted on it, which means that Rizzo was fully aware of the content of the email.

HPD Internal Affairs Investigation

The Houston Police Department Internal Affairs Division investigated the matter of the Dockery records and, at the conclusion of its investigation, pressed no charges against McDaniel. During this investigation, ADA Hardaway signed a sworn statement on 12/18/2014 attested to the following facts: When in January 2013 Hardaway began gathering evidence in preparation for the upcoming Brown

habeas hearing, Officer McDaniel volunteered that he might have some materials from the Brown case in his home garage. McDaniel searched and located a box of materials and brought them to Hardaway, who ordered them copied immediately and produced. In the box were, among other things, the Dockery records, which, according to Hardaway, *“reflected that a call was placed from the landline at Dockery’s apartment to her employer’s residence on April 3, 2003, at 10:08 a.m., which possibly supported Brown’s alibi defense, assuming that Brown made the phone call.”*

The HPD Internal Affairs investigation also contained a statement from McDaniel dated 12/31/2014, which attests the following:

My best estimate was that Deputy U.S. Marshal Hunter initially faxed me records and later provided me with hard copies in person. In fact, I believe that he provided me with copies of all of these records, in person, at the Homicide Division and was physically present himself at then Officer D.L. Robertson’s (one of the primary Homicide Division case agents on this investigation) cubicle when I personally submitted copies of the records to the Homicide case file (box).

In any event, after receiving hard copies of cell phone records, the noted landline records, and Deputy U.S. Hunter’s noted “Pen-Link” reports, I am certain that I submitted copies of these records to the homicide case file...***I specifically remember submitting hard copies of all of these records, including the noted landline records, to a case file box which was located in Officer Robertson’s cubicle***...In addition to notifying my supervisors and fellow investigators of these phone records, ***I also worked extensively with ADA Dan Rizzo (retired), the lead prosecutor in the case***...In closing, I respectfully disagree with the characterization in the IAD paperwork presented to me that I had a “box of evidentiary documents stored at my residence.” This was not the case. I must reiterate that the copies in my possession were not the original documents, nor were they ever to be used as evidence at trial. The originals were placed in the Homicide file.

(Some emphasis in original).

Deputy U.S. Marshal Richard Hunter backed Breck McDaniel's story completely. In his sworn statement dated 2/17/2015, Deputy U.S. Marshal Hunter testified as follows:

My name is Richard P. Hunter. I am employed as a criminal investigator by the United States Marshal Service, a federal law enforcement agency, and have been so employed for 22 years...I clearly recall the investigation into the murder of Houston Police Officer Charles Clark...The investigation centered mainly on real-time and historical telephone records from both cellular and *land-line phones* that McDaniel had identified...I recall receiving a request to obtain records from a land-line telephone located at an associate's house of one of the suspects identified as Alfred Brown...I then recall receiving a set of records and upon initial inspection did not know what case they were from. I opened the envelope and determined that they were the *land-line records* from the Officer Clark investigation. I called McDaniel and made an appointment to meet him at his office to deliver these records. I met with McDaniel in the Homicide section of the Houston Police Department and we went to the area of the office where his partner at the time was located and investigator (D.L.) Robertson whom I knew but had not seen in a while. They were all discussing the Officer Clark Case and were working on their case file. *I turned over the land-line records to McDaniel he made a copy of the records and I then observed McDaniel put them into what they referred to as the case file.*

(Emphasis added).

What happened to the Dockery Records?

The undersigned reached D.L. Robertson, now retired, to discuss this matter. He recalls that after the murders he received, and organized, incoming paperwork about the investigation. He has a clear memory of seeing the Dockery landline records, and that they were only a few pages long unlike the suspects' cell phone

records which were extensive. He remembers having a discussion with McDaniel at the time about the Dockery records. Based on his memory, he is confident that McDaniel filed the records with the HPD. He has no opinion regarding how they later turned up missing, but he remembers meeting ADA Rizzo some time later at the DA's office and saw that Rizzo had taken apart a "Blue Back" (binder with tabs) of official documents. Robertson thought this was unusual and risky.

Officer Breck McDaniel's statements regarding the Dockery landline records are corroborated by his 4/22/2003 email to ADA Rizzo, his 5/2/2003 Supplemental Offense Report, and the December 2015 sworn statements of McDaniel himself as well as ADA Lynn Hardaway and Deputy U.S. Marshal Richard Hunter. McDaniel personally filed the Dockery landline records in the HPD file pertaining to the murders of Officer Clark and Ms. Jones. Deputy U.S. Marshal Hunter personally saw McDaniel file the Dockery records. At some point, all records in the HPD file were gathered and copies were sent to the DA for the DA's prosecution file.

McDaniel stated during his interview for this report that other items, including phone records, that he filed in the HPD file at or around the same time he filed the Dockery records were not lost, and later appeared during time of trial and appeal in both the HPD files and the DA files regarding the prosecution of Alfred Dewayne Brown.

The 4/22/2003 email from McDaniel to Rizzo is unique in this case. It is a plainly written statement from a police officer to a prosecutor opining that certain evidence is consistent with a suspect's alibi. The one item of evidence described by law enforcement as exculpatory is also the same evidence missing from both the official files of the HPD and the DA.

McDaniel wrote an email to ADA Rizzo on 4/22/2003 calling attention to the exculpatory evidence. He filed the original Dockery records in the official HPD file, while retaining a personal copy for his own use in the investigation. Years later,

when the original Dockery records could not be located, he volunteered that he may have a personal copy in his garage. He looked for his personal copy, found it, and turned in over to the new prosecutor in the case.

ADA Rizzo was the only named recipient of the 4/22/2003 email describing the Dockery records as alibi evidence and, as discussed above, took the specific action requested in the email. He was aware of Dockery's Grand Jury testimony about receiving a call on 4/3/2003 around 10:00 a.m. while she was at work, and that the call was from Brown – who was calling from Dockery's home telephone landline. He knew the importance of the time of this 10:08 a.m. call in light of the timing of the ACE murders between 9:39 a.m. and 9:46 a.m. According to the Offense Report, ADA Rizzo discussed phone records, including landlines, extensively with Officer McDaniel. The evidence suggests that ADA Rizzo was fully aware of the existence and the importance to Brown's defense of the Dockery records. According to Officer McDaniel, ADA Rizzo had complete access, as lead prosecutor, to the HPD file at any time. The file was being collected in boxes in the Homicide Department near Officer D.L. Robertson's cubicle. There was no signing in or signing out when the records were reviewed by a prosecutor.

Of course, just because ADA Rizzo knew about the importance of the Dockery exculpatory evidence and had access to the HPD file does not mean he personally removed it. That is a very serious allegation, and the undersigned is not making it in this report. If the records were removed, they could have been removed by anyone who had access to the file. The answer to the question regarding what happened to the Dockery records will require further investigation beyond the immediate scope of this report.

Trial Presentation

The presentation of evidence and argument during Brown's trial should now be viewed in light of Officer McDaniel's 4/22/2003 email to ADA Rizzo regarding the Dockery records, ADA Rizzo's 4/24/2003 Application to the Court regarding the Dockery records, and McDaniel's 5/2/2003 Supplemental Offense Report.

On October 14, 2005, in the middle of Brown's trial, ADA Rizzo's co-counsel ADA Tommy LaFon called Officer McDaniel to the witness stand to testify about the cell phone records of Glaspie and Joubert (Exhibit 240). ADA LaFon asked Officer McDaniel: "And State's Exhibit No. 240, is that basically ... a compilation of information that you acquired during your investigation...?" Officer McDaniel responded: "It is a compilation of those two sets of information." Trial Transcript (Brown) Vol. 32, pg. 82 (emphasis added). The State did not mention the *other* "set of information" – Ericka Dockery's unproduced landline records. The State skipped past the 10:08 a.m. phone call from Ericka Dockery's apartment to Alma Berry's house in its chronological phone record presentation, referencing an 8:45 a.m. phone call from Glaspie's cell phone, then stating that "*the next phone call we have*" is a 10:14 a.m. phone call to Glaspie's cell phone. *Id.* at 104. (Note: There is currently no evidence that either Officer McDaniel or ADA Rizzo discussed the existence and content of the Dockery records with ADA LaFon. Mr. LaFon was reached in preparation of this report, and stated that at the time of trial he was not aware of their existence.) Regardless, ADA Rizzo did not, as an officer of the Court, correct the record.

On Closing Argument, ADA Rizzo dealt with trial testimony that Alma Berry recognized Dockery's apartment's number on Caller ID as follows:

And we know that she (Dockery) received a phone call at 10:00 a.m. She was told to turn on the breaking news. We know Ms. Berry said that she thought it was coming from her (Dockery's) house, which is

probably a mistake. As you now know Ms. Berry has trouble seeing a little bit. She knows the Defendant, but she kind of was looking over at – I thought she was going to pick one of you folks out, actually. But she has trouble seeing. And, you know, her glasses – bless her heart, her glasses are pretty thick. And she’s just wrong about that...

Trial Transcript (Brown) Vol. 33, pg. 94. Thus, ADA Rizzo participated in (or, at a minimum, observed) incorrect witness presentations, and personally made oral arguments, which were directly inconsistent with material exculpatory evidence which he was aware of and chose not to produce.

This Assignment

The Dockery phone records were acknowledged by law enforcement long before Brown’s trial to be consistent with Brown’s alibi that Brown was in Dockery’s apartment on the morning in question – corroborating the statements of “the nephews” (only one was awake that morning, Reginald Jones) to police that Brown was there, as well as the statements of Dockery and Berry that Caller ID identified the call to Berry that morning as coming from Dockery’s apartment. ADA Rizzo signed the Application immediately after Dockery’s Grand Jury testimony and McDaniel’s email. According to the above detailed Supplemental Offense Report entry, Rizzo personally talked at length to McDaniel about the phone records.

Current Harris County District Attorney Kim Ogg appointed the undersigned to analyze whether Brown should be re-indicted, whether he should be declared actually innocent, or whether the status quo of dismissed charges with no formal declaration of innocence should continue.

III. LEGAL STANDARDS

The Tim Cole Act

The Tim Cole Act (“TCA”) provides a person who has been wrongfully incarcerated with an administrative remedy to seek monetary compensation from the State for the period of wrongful imprisonment. *See In re Blair*, 408 S.W.3d 843, 847–48 (Tex. 2013). The compensation scheme under the TCA is liquidated damages for a “wrong done in the State's name” based on time served. *Id.* Under the TCA, a claimant is entitled to compensation if he has served in whole or in part a sentence in prison, and has been granted relief on the basis of actual innocence of the crime for which he was sentenced. TEX. CIV. PRAC. & REM.CODE ANN. § 103.001(a)(1) & (a)(2)(West Supp. 2013); *Ex parte Springsteen IV*, 506 S.W. 3d 789, 791-792 (Tex. App. – Austin 2016).

The TCA does not define the term “actual innocence.” *In re Allen*, 366 S.W.3d 696, 701 (Tex. 2012). “Actual innocence” is a legal term of art, which has acquired a technical meaning in the habeas corpus context. There are two types of “actual innocence” claims in habeas corpus writs, *Herrera* claims and *Schlup* claims. *Ex parte Elizondo*, 947 S.W. 2d 202, 205 (Tex. Crim. App. 1996) citing *Herrera v. Collins*, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993) and *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). The Texas Supreme Court held that, in drafting the TCA, the Legislature intended the legal term of art “actual innocence” to include both *Herrera* and *Schlup* claims. *Allen* at 706.

Herrera Claim

A *Herrera* claim of actual innocence is based upon newly discovered evidence. *Ex parte Elizondo* at 207. It requires the applicant to prove by clear and convincing evidence that no reasonable juror could have found the applicant guilty in light of the new evidence. *Id.* The evidence must be “newly discovered” or

“newly available,” meaning it was not known to the applicant at the time of trial and could not have been known to the applicant even with due diligence. *Id.* The Texas Court of Criminal Appeals noted: “When a petitioner has been ‘tried before a jury of his peers, with the full panoply of protections that our Constitution affords criminal defendants it is appropriate to apply an ‘extraordinarily high standard of review.’” *Id.* at 208, citing *Herrera*, 506 U.S. at 419. In a *Herrera* claim, the evidence presented must constitute affirmative evidence of his innocence, such as a trustworthy witness recantation. *Franklin*, 72 S.W. 3d at 678 n.7 (Tex. Crim. App. 2002). “A recantation must be direct, specific and certain.” *Mayhugh*, 512 S.W.3d at 296. In the case of a *Herrera* claim, the habeas court must be “convinced that [the] new facts unquestionably establish [the applicant's] innocence.” *Elizondo* at 209. “Unquestionably establish” has been interpreted by the Texas Court of Criminal Appeals to mean the same thing as clear and convincing.” *Id.* (Emphasis added).

Schlup Claim

The other type of actual innocence claim under Texas law is *Schlup* claim in which an appellant “accompanies his claim of innocence with an assertion of constitutional error at trial.” A *Schlup* applicant is allowed a lower burden of proof because he was not afforded with the full panoply of protections our Constitution provides. *Id.* at 208. The U.S. Supreme Court held that in the context of a *Schlup* claim, “a petitioner must show that the constitutional error ‘*probably*’ resulted in the conviction of one who was actually innocent.” *Id.* citing *Schlup* at 322. “The petitioner must show that it is *more likely than not* that no reasonable juror would have convicted him in light of the new evidence.” *Id.* (emphasis added).

There are several constitutional violations which have qualified for habeas relief under the lower *Schlup* standard, including: State suppression of evidence

favorable to the accused; conviction based in part upon the introduction of a coerced confession; State concealment of a material witness whose testimony is shown to create a reasonable doubt of guilt that did not otherwise exist; State use of false testimony to obtain a conviction, regardless of whether it does it knowingly or unknowingly; and State use of false testimony, material to a defendant's conviction meaning "there is a reasonable likelihood that the false testimony could have affected the judgment of the jury." *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963); *Rogers v. Richmond*, 365 U.S. 534, 544, 81 S.Ct. 735, 741, 5 L.Ed.2d 760 (1961); *Hernandez v. Estelle*, 674 F.2d 313 (5th Cir.1981); *Ex parte Robbins*, 360 S.W.3d 446, 459 (Tex. Crim. App. 2011); *United States v. Agurs*, 427 U.S. 97, 103-04, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976); *Ex parte Ghahremani*, 332 S.W. 3d 470, 478 (Tex. Crim. App. 2011).

Corroborating Evidence

The Texas Court of Criminal Appeals held that in assessing whether an applicant met his burden to show actual innocence, it is imperative to consider the strength of the State's case in light of the new evidence. *Ex parte Mayhugh*, 512 S.W. 3d 285, 289 (Tex. Crim. App. 2016). Where the State's case rests largely on the testimony of an accomplice, the Texas Code of Criminal Procedure requires the testimony be "corroborated by other evidence tending to connect the defendant with the offense." *Cathey v. State*, 992 S.W.2d 460, 462 (Tex. Crim. App. 1999). The accomplice witness rule is met if there is some non-accomplice evidence tending to connect the defendant to the commission of the offense. *Hernandez v. State*, 939 S.W.2d 173, 176 (Tex. Crim. App. 1997).

Brown Case

Alfred Dewayne Brown was granted habeas relief based on the State's concession that it withheld exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Holding that the material withheld by the State was favorable to Brown and material to Brown's case in violation of *Brady*, the Court of Criminal Appeals vacated Brown's conviction and sentence. To determine whether Brown is eligible for compensation under the Tim Cole Act, the withheld evidence must be considered in light of the evidence in the State's case against Brown as it exists today.

Even though the Texas Supreme Court recognized in *Allen* the applicability of the *Schlup* "more likely than not" standard to the TCA (where, as here, there has been a constitutional violation), this report will analyze the Brown case under the higher *Elizondo/Herrera* "clear and convincing evidence" standard.³ If the higher standard is met, the lower standard will be met as well.

IV. KEY ISSUES

1. Is Glaspie's testimony credible and can it be corroborated?
2. What is the impact on the case of the only two witnesses who have not substantively changed their testimony – Patricia Williams and Reginald Jones?
3. What is the significance of the testimony of multiple eyewitnesses identifying the three suspects as "one tall and two shorter?"
4. Is there sufficient evidence to retry Brown today?

³ The *Elizondo* standard was reaffirmed by the Texas Court of Criminal Appeals on December 19, 2018 in *Ex Parte Steven Mark Chaney*.

V. ANALYSIS OF EVIDENCE

Witnesses

Out of the 38 witnesses interviewed and/or testifying in this case, nearly all changed their stories multiple times, often in internally contradictory ways. Section VI of this report provides chronological summaries of every statement by each witness, together with an analysis of the potential current testimony of each witness. Most of the statements made by witnesses since the events in question are wavering and inconsistent. Only two witnesses have not materially changed their testimonies. (1) Patricia Williams – who has no established bias either for or against Brown – consistently provided the same description of facts surrounding the crucial 10:07 a.m. – 10:08 a.m. phone calls in each of the five interviews she gave between 2003 and 2015. (2) Reginald Jones consistently testified that Brown was at Dockery’s apartment around the time of the murders.

Physical Evidence

There are certain solid facts that an investigator can trust with confidence while trying to analyze an event so long ago. These facts include known times telephone calls were made, known times electronically linked doors were opened and closed, known distances between known locations, and the known times required to travel those distances. HC/BROWN-53908-31; Offense Report (“OR”) 2.040; Trial transcript (Brown) State’s exhibit 223, Vol. 32, page 82. We will analyze witness testimonies in light of these facts.

A. TIMELINE OF APRIL 3, 2003

The following is a timeline of known events of the morning in question, together with a brief description of the evidence surrounding them. (*For further*

citations to the evidence described below, see the summaries in Section VI of this report of all statements and testimonies of the principal witnesses.)

1:03 a.m. – phone call from Ericka Dockery’s apartment (Plum Creek Apartments, 6969 South Loop Freeway, #406) to Glaspie’s cell phone.

Alfred Dewayne Brown spent the night with his girlfriend Dockery at her apartment, together with Dockery’s small children and Dockery’s two nephews Reginald Jones (18) and Ruben Jones (15). OR 2.099-100.

Glaspie spent the night with his girlfriend Tonika Hutchins, eventually ending up at her father’s house, 129 Winkler Drive. On the morning in question, he borrowed Hutchins’s white Pontiac Grand Am. OR 2.327.

1:39 a.m. – phone call from Joubert’s cell phone to Glaspie’s cell phone.

1:51 a.m. – phone call from Joubert’s cell phone to Aaron “AB” Brown’s cell phone.

(Note: Aaron “AB” Brown is the half-brother of Alfred Dewayne Brown.)

6:42 a.m. – phone call from Glaspie’s cell phone to Dockery’s apartment.

6:43 a.m. – phone call from Glaspie’s cell phone to Joubert’s cell phone.

6:44 a.m. – phone call from Glaspie’s cell phone to Dockery’s apartment.

6:45 a.m. – phone call from Glaspie’s cell phone to Dockery’s apartment.

6:48 a.m. – phone call from Dockery’s apartment to Glaspie’s cell phone.

Around this time Dockery took her children to school, came back briefly, then left again. She has told multiple different versions of this story, with different times.

6:50 a.m. – phone call from Glaspie’s cell phone to Tonika Hutchins’s cell phone.

7:15 a.m. – phone call from Glaspie’s cell phone to Joubert’s cell phone.

Approximately 7:25 a.m. –

LaTonya Hubbard and Latisha Price stopped for gas at a gas station on Telephone Road. The station was next door (to the immediate north) of Leo’s Kwik

Cash Store, 9705 Telephone road. At the gas station, LaTonya Hubbard saw three men – each of whom she knew personally – who were putting gas in their car, a white Pontiac Grand Am. According to the statement made by LaTonya Hubbard to police later that day, the three men she saw were Glaspie, Joubert, and Ernest “Deuce” Matthews. OR 2.143. Latisha Price recognized only Glaspie and Joubert that day and did not identify the third man. *Id.* In a line-up on April 5, both Hubbard and Price identified Glaspie (OR 2.190) and Joubert (OR 2.189), and did not identify Brown (OR 2.188). Inexplicably, Matthews was not put in the lineup.

Approximately 7:30 a.m. –

Both Glaspie and Joubert agree that they and the third man decided to try to rob Foisner’s store, which was next to the gas station where LaTonya Hubbard saw the three men. OR 2.118; OR 2.327; HC/BROWN-56605, 29551. Foisner told police that two of the three men walked toward him with their hands in their pockets. OR 2.165. Foisner, an army combat veteran, let them see him cock his pistol, and the two men detoured from their course, turned, and went back to the gas station. *Id.* Vanan Saukam, a customer of Foisner’s, observed all three suspects. OR 2.235. He told the police that one man was tall and the other two were around his (Saukam’s) height (5’8”). *Id.*

7:36 a.m. – time stamp of front door opening of Leo’s Kwik Cash Store.

Leo Foisner, following his encounter with two men out of a three man group now known to include Glaspie and Joubert, opened the front door to Leo’s Kwik Cash Store, 9705 Telephone Road (electronic time stamp confirmed in Foisner’s police statement on April 4, 2003). OR 2.165-66.

Glaspie and Joubert agree that after the robbery foiled by Foisner, they and the third man with them returned to the Villa Americana Apartments (“VA”) together to relax for a couple of hours before attempting another robbery. OR 2.328; HC/BROWN-29551. Amos Bass saw Glaspie and Joubert pull up to the VA around

7:45 a.m. Glaspie was “messaging with” his pistol. Brown was not with them. OR 2.210.

Approximately 8:00 a.m. –

Alicia Hubbard (sister of LaTonya) reported to the police that she saw three men on the morning of 4/3/2003 – Glaspie, Joubert, and Ernest “Deuce” Matthews – standing by a white Pontiac Grand Am at the VA. OR 2.141. Glaspie had his .45 pistol, and was loading his clips with bullets. OR 2.142. (Hubbard said that Glaspie always carried that .45 pistol with him, and last week she saw him shooting it in the VA’s parking lot.) OR 2.141.

8:26 a.m. – phone call from Dockery’s apartment to Glaspie’s cell phone.

8:30 a.m. – phone call from Dockery’s apartment to Alma Berry’s house.

8:38 a.m. – phone call from Joubert’s cell phone to Glaspie’s cell phone.

Joubert and Glaspie both agree they were at the VA at the time, so they were likely in different apartments.

8:39 a.m. – phone call from Joubert’s cell phone to Dockery’s apartment.

8:45 a.m. – phone call from Glaspie’s cell phone to Sharhonda Simon’s apartment.

Simon was a former girlfriend of Brown and the mother of Brown’s child. HC/BROWN-07518. Glaspie says this was Brown using his phone to call Simon. OR 2.328. However, Glaspie himself called Simon at 10:54 a.m., and she called Glaspie at 2:27 p.m. HC/BROWN-53963; Glaspie cell phone records.

Approximately 9:20 a.m. –

Sheikh Mohammed Afzal was manager of the furniture store next door (to the immediate West) of ACE America’s Cash Express, 5700 South Loop East, Houston, Texas. He told police that two black males entered his store around 9:20 a.m. on the day of the crime. One man was tall and the other man was shorter. OR 2.183. He talked briefly to the tall man about bedroom furniture. *Id.* He did not talk to the

shorter man. *Id.* Both men left, and the attempted robbery and murders next door happened shortly afterward.

Glaspie, who is reportedly 6'5'', admitted that he was the (tall) man who talked to Afzal. OR 2.328. Both Glaspie and Joubert agree that Joubert did not enter the store, and there is no evidence that the shorter man was Joubert. *Id.*; HC/BROWN-29551. The suspect would, therefore, logically be another shorter man who is not Joubert.

(9:39 to 9:46 a.m.)

The ACE murders happened during this time.

9:39 a.m. – Ms. Jones opened the door to the ACE office, likely at gunpoint with one or two robbers behind her. OR 2.034.

9:40 a.m. – The alarm code for the safe was entered. (Note – There was a 10 minute safety delay before the safe could be opened, so the robbers were not able to access the contents during the crime.) *Id.*

9:42 a.m. – Ms. Jones called ACE headquarters to “check in” – and gave them the secret code (“entering center 24”) for a robbery in progress. *Id.*

9:44 a.m. – Officer Clark agreed to accept the dispatch call and drove toward the robbery. *Id.*

9:45 a.m. – Officer Clark arrived on scene. *Id.* He notified dispatch that the suspects were armed. *Id.* Clark exchanged fire with the suspects on the inside. Clark’s gun jammed. *Id.* He was shot twice with .380 bullets. *Id.* Clark died with his right leg propping open the front door. OR 2.029.

Ms. Jones was murdered at or near this time. She was killed with Glaspie’s .45 caliber pistol. OR 2.035.

9:45:53 a.m. – The time-stamp of the last opening of an interior door at ACE. OR 2.040.

9:46 a.m. to 10:07 a.m. –

The suspects drove from the ACE office at 5700 South Loop East to the VA at 5901 Selinsky Road and parked. Glaspie and Joubert, according to Patricia Williams, went upstairs to Patricia Williams' apartment (#244). OR 2.230.

10:07 a.m. – phone call from Patricia Williams's apartment at the VA (#244) to Dockery's apartment.

10:08 a.m. – linked phone call from Dockery's apartment (with 10:07 a.m. call) to Alma Berry's house. [Note: these two linked calls were crucial evidence, unproduced by the State, discovered 8 years after trial in Officer Breck McDaniel's garage.]

10:25 a.m. – phone call from Alma Berry's house to Joubert's cell phone.

10:27 a.m. – phone from Glaspie's cell phone to Aaron Brown's cell phone.

10:29 a.m. – phone from Glaspie's cell phone to Tonika Hutchins's cell phone.

10:42 a.m. – phone from Glaspie's cell phone to Tonika Hutchins's cell phone.

10:48 a.m. – phone from Tonika Hutchins's cell phone to Glaspie's cell phone.

10:53 a.m. – phone from Glaspie's cell phone to Aaron Brown's cell phone.

10:54 a.m. – phone from Glaspie's cell phone to Sharhonda Simon's cell phone.

10:57 a.m. – phone from Tonika Hutchins's cell phone to Glaspie's cell phone.

Approximately 11:15 a.m. –

George "Ju-Ju" Powell told Lisa Hubbard that "Shaun" (Glaspie), "Ghetto" (Joubert) and "Duece" (Ernest Matthews) robbed a check cashing office on the 610

Loop, and that they shot and killed a police officer. OR 2.141 (Ms. Hubbard reported this to HPD on the day of the crime). *Id.*

11:57 a.m. – phone from Dockery’s apartment to Joubert’s cell phone.

11:59 a.m. – phone from Dockery’s apartment to Aaron Brown’s cell phone.

12:36 p.m. – phone from Joubert’s cell phone to Glaspie’s cell phone.

The afternoon and evening of 4/3/2003

Many different versions of the events of the afternoon and evening of 4/3/2003 have been told by the different witnesses, several of whom later admitted to having been impaired by drugs and alcohol that day. Over time, several of the witnesses changed their stories in numerous, internally inconsistent ways. For further detail, summaries of all their statements are in Section VI of this report. None of the evidence from the witness statements about the afternoon and evening of 4/3/2003 is probative of whether Brown was physically present at the ACE crime scene between 9:39 a.m. and 9:46 a.m. on the day of the murders.

B. TIMES, DISTANCES, AND TRAVEL TIMES

Only one car was used by Glaspie, Joubert, and the third man with them during the criminal activities of April 3, 2003 – the white Grand Am owned by Glaspie’s girlfriend Tonika Hutchins. OR 2.327, 2.150. While reading the discussion below, please refer to the map of time and distances on page 44. The times of travel were provided by “Google Maps”, which assumes no unusually heavy traffic. To the extent that roads have changed since 2003, that has been incorporated into this analysis. *(For further citations to the evidence described below, see the descriptions in Section VI of this report of all statements and testimonies of 38 witnesses.)*

1. Before and shortly after the attempted robbery of Leo's Kwik Kash –

The night before the crimes, Glaspie spent the evening with Hutchins at her father's house, 129 Winkler Drive. OR 2.327. At the time, Brown was living with his girlfriend Ericka Dockery at 6969 South Loop Freeway, #406. OR 2.100.

According to Glaspie, while he was at Hutchins's father's house on the morning in question, he used his cell phone to try to reach Brown at Dockery's apartment. OR 2.327. There were three such calls from 6:42 a.m. to 6:45 a.m. At 6:48 a.m. there was a call back to Glaspie's cell phone from Dockery's, indicating that communication had been achieved. At that point, Glaspie either picked up Brown (as Glaspie said) or went on without him while Brown stayed at Dockery's (as Brown and Reginald Jones said). Glaspie said that an elderly woman, who he thought was Dockery's mother, answered the door at Dockery's. OR 2.327. There is no evidence any such person was staying at Dockery's during this time.

Dockery told several different versions of when she saw Brown before leaving to take the children to school. The first time she gave was 6:45 a.m. OR 2.128. At trial she said it was closer to 7:15 a.m. Trial Transcript (Brown) Vol. 31, pg. 44. If her earliest time is used, and Glaspie left Hutchins's father's house immediately after the 6:48 a.m. call, he would have arrived at Dockery's at 6:52 a.m. (A to B on attached map). He said he had to knock on the door and ask an unidentified woman to wake up Brown. OR 2.327. Even if it only took 8 minutes for Brown to wake up, put on clothing, and come outside, the earliest they could have left Dockery's apartment would be 7:00 a.m.

Glaspie said they drove next to the Villa America Apartments ("VA") at 5901 Selinsky Road to pick up Elijah Joubert. *Id.* According to the phone records, there was a call from Glaspie to Joubert at 7:15 a.m. This may have been as he was getting close to the VA. (It certainly would not have been made *after* Glaspie picked up Joubert, since they were in the same car.) The drive would have taken 17 minutes,

placing them there at 7:17 a.m. (B to C on attached map). Glaspie testified that he pulled up in front of Lamarcus Colar's apartment, and Joubert came out and got in the car. *Id.* If pulling in and picking Joubert up took only 2 minutes, Joubert would be in Glaspie's car at 7:19 a.m.

Glaspie said that the three men next drove to Aaron "AB" Brown's apartment across the street at Crystal Springs Apartments, 5900 Selinsky Road, to pick up a jacket (C to D on attached map). *Id.* Glaspie said that they had to knock on Aaron Brown's window to wake him up, then entered his apartment to retrieve the jacket. *Id.* This process of driving there, pulling in and waking him up probably took at least 4 minutes, making the time 7:23 a.m. [Note: Aaron Brown told police he actually lived four minutes farther west at 5602 Selinsky Road #79. Travelling there and back would add additional time (C to E on attached map)]. Even assuming Glaspie's version of Aaron "AB" Brown's location, the drive from Crystal Springs Apartments to Leo's Kwik Kash at 9705 Telephone Road would take 12 minutes (D to F on attached map)⁴, placing the three men there at 7:35 a.m.

LaTonya Hubbard originally identified Glaspie, Joubert, and Ernest "Deuce" Matthews at the gas station next door to Leo's Kwik Kash as they were putting gas in the car. OR 2.144.

Glaspie said that two of the three men in his group walked from the gas station toward Leo's. OR 2.327. While walking, the two suspects were confronted by Leo Foisner, who was standing next to his customer Vanan Saukam. OR 2.235. All three suspects were observed by Saukam, who described them as one tall man and two about his height (5'8"). *Id.* All witnesses agree that Leo Foisner let the two men walking toward him see that he had a pistol, and that the two men turned and walked back to the gas station. OR 2.165. Foisner next talked to his wife, talked to

⁴ E. Orem Drive did not exist in 2003, so Alameda-Genoa is the most direct route.

Saukam, then opened his store at exactly **7:36 a.m.**, confirmed by electronic time stamp. *Id.*

Is Glaspie's narrative about picking up Brown possible? Perhaps, but it would be cutting it extremely close, and assumes that (1) Dockery left her house between 6:45 a.m. and 6:50 a.m. (she testified that she did not see Brown leave her apartment), and (2) Glaspie arrived at Dockery's door a minute or two after she left, then drove over the speed limit along his route, hitting green lights (or running red lights). However, if Dockery left her apartment closer to 7:15 a.m., as she testified during Brown's trial, Glaspie's narrative about picking up Brown is highly unlikely. Even if Glaspie picked up Brown a few minutes before 7:15 a.m., it would be extremely difficult for Glaspie to pick Brown up, do all the other things he described, and then make the drive to the first (attempted) crime scene in time to confront Leo Foisner *before* he opened his store at **7:36 a.m.**

Glaspie testified that he was unable to wake up Brown when he called at 6:42 a.m., 6:44 a.m. and 6:45 a.m. There was a call back to Glaspie from Dockery's landline at 6:48 a.m., likely from Brown. If Glaspie decided to go on without Brown, and headed south toward the VA, he could comfortably get there by 7:00 a.m., which would give him plenty of time to pick up Joubert and another accomplice at the VA and make it to Leo's Kwik Kash before the store was opened.

There is one final note of interest during this time period. Glaspie testified that all three men went back to the VA after their encounter with Leo Foisner before embarking on their next attempted robbery at ACE. OR 2.328. There was a call at 8:26 a.m. from Dockery's apartment to Glaspie's cell phone. There was a call at 8:30 a.m. from Dockery's apartment to Alma Berry's house. There was a call at 8:39 a.m. from Joubert's cell phone to Dockery's apartment. Logically, the first and second of these calls were made *from* Brown, and the third call was likely made *to*

Brown. These phone records are inconsistent with Glaspie's story. Rather, they are consistent with Brown's story that Brown was at Dockery's, not the VA, at the time.

2. From the ACE murders to the 10:07 a.m. and 10:08 a.m. phone calls

The ACE Check Cashing outer "mantrap" door inside the office lobby closed at 9:45:53 a.m. OR 2.040. This is the last electronic time stamp from the location. The exterior door of the office never closed, because it was kept open by Officer Clark's body. OR 2.029. This means that, at the earliest, the three suspects left the crime scene at **9:46 a.m.**

The ACE office address was 5700 South Loop East Freeway #A. OR 1.001. It is undisputed that the three suspects left from there together in a single vehicle, as observed by eyewitness James Wheat. OR 2.150. Glaspie and Joubert both agree that that only one car was used to drive to and from the crime scene. OR 2.328; HC/BROWN-29551. Glaspie and Joubert both agree that they drove the car directly back to the VA without stopping anyplace else. *Id.* Glaspie adds that they were slowed by construction on the 610 feeder road, and had to detour through neighborhoods before they could reach the major road, Martin Luther King Blvd, back to the VA.⁵ OR 2.329.

The next absolutely known time available is a phone call at **10:07 a.m.** from Patricia Williams's apartment (#244) at the Villa Americana apartments, 5901 Selinsky Road, to Ericka Dockery's apartment (#406) at Plum Creek Apartments, 6969 South Loop East Freeway. (This phone record was part of the evidence obtained before Brown's trial and withheld from the defense and the Court.)

From **9:46 a.m.** to **10:07 a.m.** is *twenty-one minutes*. That is the maximum time available for the suspects to leave the crime scene, get in the car, drive to the

⁵ Likely they turned south on Crestmont Street, the shortest and most direct route.

VA, park, meet Patricia Williams in the parking lot, request permission to go into her apartment, go upstairs to Patricia William's second floor apartment, enter and turn on and watch the news on her TV, before using Williams's landline to call Dockery's apartment. The events solely at the VA likely took, at a minimum, several minutes.

According to Google Maps, the travel distance (G to C on attached map) from ACE at 5700 South Loop East to the VA at 5901 Selinsky is 15 minutes, setting their estimated arrival at 10:01 a.m. It likely took a few minutes longer because of the construction on the 610 feeder, but if they arrived at the VA somewhere in that range there would be enough time to park, meet Williams, go upstairs to Williams's apartment, and place the phone call to Dockery's (which, obviously, they succeeded in placing) at **10:07 a.m.** [Note: Glaspie was allowed to testify at Brown's trial that the men initially went to Lamarcus Colar's apartment at the VA to change clothes, threw the clothing they used during the robbery into a dumpster, and later went to Patricia Williams's apartment. Trial Transcript (Brown) Vol. 31, pg. 178. This is an impossible scenario, but the defense did not have the Dockery phone records to use in exposing its impossibility.]

There was absolutely insufficient time for the get-away car to drive *first* from the crime scene at ACE at 5700 South Loop East to Ericka Dockery's apartment at 6969 S. Loop East #406 to drop Brown off, and *then* drive to Patricia Williams's apartment at the VA (5901 Selinsky Road #244) to place the 10:07 a.m. call. Even if there was no heavy traffic from construction on the 610 feeder, and it is undisputed that there was, driving from ACE to Dockery's (G to B in the map attached) would take 5 minutes. Even if they quickly dropped Brown off at the front gate and did not drive him in, it would still take another 17 minutes (B to C on the attached map, using the most direct route of Wayside Drive to Dixie Drive to Mykawa Drive to Selinsky Road). This would place their time of arrival at the front gates of the VA

at a time *after* the beginning of the 10:07 a.m. call, without even counting the necessary several minutes required to park, meet Patricia Williams, go upstairs to Williams's apartment, and turn on her TV.⁶

The only solution that satisfies the known times of events, the known distances, and the known time to travel those distances, is that Glaspie and Joubert and the third man *drove directly to the VA*, as Glaspie and Joubert both said. They could not possibly have driven Brown to Dockery's, nor did they ever claim they did.

In 5 different statements (4 of which were made to the police) over a 12 year period beginning only 6 days after the murders, Patricia Williams has consistently maintained that only *two* men entered her apartment around the time of the 10:07 a.m. phone call, two men she knew well because they had come into her apartment on prior occasions to watch her TV and use her phone: *Glaspie and Joubert*. See multiple citations to Williams's testimony below.⁷ Williams said she did not know Alfred Dewayne Brown. *Id.* She did not recognize Brown's photograph when it was shown to her. *Id.* There is no evidence in this case that she has any bias for or against Brown. She was very clear that Brown was not with Glaspie and Joubert in her apartment on the day in question, indeed, she stated repeatedly that no one else was in her apartment besides Glaspie and Joubert. *Id.* (This means that Glaspie and Joubert separated with the third man, likely in the parking lot of the VA, before coming up to Williams's apartment.)

We now know from the phone records that were not disclosed to the Brown defense team and the Court that the **10:07 a.m.** phone call from Patricia Williams's

⁶ It would take them even a longer time, a minimum of 28 minutes, to drive first to the VA and then for Brown to catch a ride with someone else back north to Dockery's.

⁷ First Statement to Police, OR 2.230; Second Statement to Police, OR 2.273; Third Statement to Police, OR 2.310; Statement to Defense Team; December 9, 2008 (provided by Brown's counsel, Tab 6); Fourth Statement to Police May 13, 2015, Audio Disc (provided by HPD).

apartment to Ericka Dockery's apartment *overlapped* the **10:08 a.m.** phone call from Ericka Dockery's apartment to Alma Berry's house.

In defending the federal civil suit filed by Brown⁸, Harris County retained Ben Levitan as a telephone records expert. Mr. Levitan has over 30 years of experience in the telecommunications industry as a developer of phone systems and a technology consultant. The undersigned interviewed Mr. Levitan to discuss his analysis of the Southwestern Bell telephone records from the morning of 4/3/2003 at issue in this case.

In Mr. Levitan's opinion, the records show the following. A call was made from Patricia Williams's home to Ericka Dockery's home which began at 10:07:13 a.m. At 10:08:19 a.m. this call was linked with a new call made from Ericka Dockery's home to Alma Berry's home. The two calls were linked together in a three-way call until 10:10:35 a.m., when the call from Ericka Dockery's home to Alma Berry's home ended. After that, the original call from Patricia Williams's home to Ericka Dockery's home continued as a single call until 10:10:49 a.m. The records contain a reference to the service code ("010") for use of the 3-way calling function.

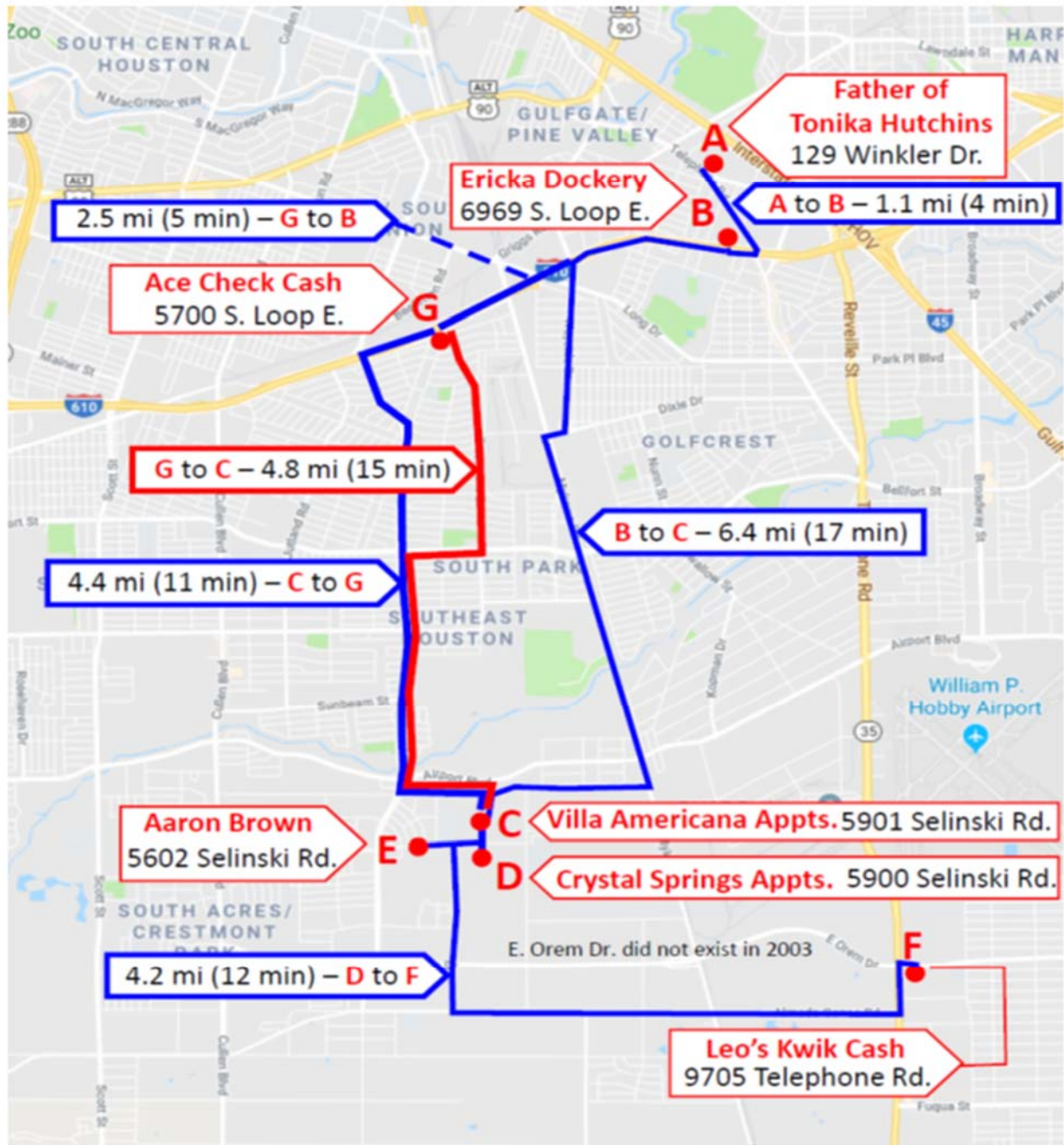
Mr. Levitan's written report is careful not to speculate about who made the calls or what was said during them. He referred to "the person calling from the Williams phone" and the fact that "someone at the Dockery's house...created a 3-way call." During his interview, he reiterated that the numerical, coded records tell an investigator nothing about the identity of the people on the phone or the content of the messages. Answers to those questions must be based on other evidence, such as the testimony of fact witnesses. For example, Mr. Levitan was asked if it is possible that Glaspie and Joubert (who were at Williams's home) called Brown (who

⁸ Civil Action No. 4:17-CV-01749; United States District Court, Southern District of Texas, Houston Division.

was at Dockery's home) and asked permission to stay at Dockery's until things calmed down, and that Brown then "patched in" Dockery (who was at Berry's house) on a 3-way call to ask her if that was ok. Mr. Levitan responded: "I can't say that is not true."

Ericka Dockery testified that when the 10:08 a.m. call rang at Alma Berry's, Berry saw Dockery's number on the Caller ID and said "Ericka, it's your house." OR 2.305. Both Berry and Dockery recognized Brown's voice on the other line, and Dockery talked to Brown. *Id*; OR 2.245. Since Brown was on the line of the linked calls, he either had to be at the site of the initiation of the 10:07 a.m. call (Williams's apartment) or the initiation of the 10:08 a.m. linked call (Dockery's apartment). As shown above, there was no time to leave the crime scene at 9:46 a.m. in the one vehicle used, drive Brown to Dockery's, then drive to the VA to get on a call from Williams's apartment starting at 10:07 a.m. Under the known facts, if Williams is telling the truth that Brown was not in her apartment at the time of the phone call, Brown could not have been one of three men involved in committing the ACE murders.

3. MAP



Red line G to C – the most likely route from ACE Check Cash to Villa Americana apts.

C. PATRICIA WILLIAMS

Patricia Williams is one of the only two witnesses in this case that has always remained consistent. As described more fully above, in 5 different statements over a 12 year period Patricia Williams consistently maintained that only two men entered her apartment around the time of the 10:07 a.m. phone call: Glaspie and Joubert. First Statement to Police, OR 2.230; Second Statement to Police, OR 2.273; Third Statement to Police, OR 2.310; Statement to Defense Team; December 9, 2008 (provided by Brown's counsel, Tab 6); Fourth Statement to Police May 13, 2015, Audio Disc (provided by HPD). Williams was very clear that Brown was not with Glaspie and Joubert in her apartment on the day in question.

Patricia Williams is steady, dependable, and unchanging. Whether two men, or three men, were in Williams's apartment is not the sort of thing a witness would "mistake." The 10:07 a.m. and 10:08 a.m. phone calls are linked, and Brown was on the 10:08 a.m. call. If Williams is being truthful, and the evidence reveals no motive for her to lie, then Brown was not in her apartment at the time of the 10:07 a.m. call. If he was not in her apartment, he must have been in Dockery's apartment. There is no other alternative. The implication of Brown being in Dockery's apartment at 10:07 a.m. is explained in Section V, B (2) above.

D. REGINALD JONES

Reginald Jones was 18 years old at the time of the April 3, 2003 crime, living in the apartment of his aunt Ericka Dockery along with his brother and Alfred Dewayne Brown. HC/BROWN-8823-24. According to his initial statement on April 4, 2003, Jones told HPD that that on the day of the crime he woke up around 9:30 a.m. to 10:00 a.m. and started playing video games downstairs. OR 2.130. No one else in the house was awake. *Id.* He had a good view of the front and back doors and could easily see if someone was coming in or out. *Id.* He also had a good

view of the stairs up to the upstairs bedroom. *Id.* He did not see Brown until he came downstairs at around 1:00 p.m. *Id.*

During his Grand Jury testimony on 4/21/2003, Jones told precisely the same version of facts as in his statement, adding that Brown told him when he came downstairs that he had an upset stomach, and had been suffering from it all day. HC/BROWN-8854, 8860-61. (A portion of his Grand Jury testimony is quoted below).

Jones signed a sworn Affidavit on 4/9/2010, with the following testimony: Alfred Dewayne Brown was with Jones in the apartment the day of the crime. Jones could have been in the living room as early as 9:00 a.m. playing video games. He saw Brown come down the stairs sometime between 10:00 a.m. and 11:00 a.m. At that time, Jones had been watching breaking TV news about the crime for about 5 minutes. Jones had a clear view of both doors from where he was in the living room and would have seen someone come in or out. He did not see anyone enter or leave the apartment that morning. Jones said that police pressured him to sign an initial statement that Brown came downstairs at 1:00 p.m., which was not true, because Brown came downstairs earlier. Jones said that the police and Grand Jury only wanted him to say what they wanted to hear.⁹ Jones Affidavit, Materials provided by Brown's counsel, Tab 9.

Like Patricia Williams, Reginald Jones is a witness that has never changed his story on critical facts. Regardless of the time Jones remembers that Brown came downstairs on the morning of the crime, Jones's testimony consistently provides Brown an alibi. Jones testified that because he was in a position to see the front door

⁹ There is evidence of this in the Grand Jury transcripts, where the Grand Jurors, with ADA Rizzo present, repeatedly asked questions which assumed that Brown came into the apartment some time that morning. See quotations from transcript below.

and the back door throughout the morning of the crime, if anyone had come into the apartment that morning he would have seen them.

Jones's following exchange with the Grand Jury is informative – both of the Grand Jury's determination to eliminate Brown's alibi and of Jones's steadfast refusal to be manipulated:

Q. Okay. And then at some point you see Doby?¹⁰

A. Yes.

Q. Okay. Where is he coming from?

A. He came from downstairs. I mean from upstairs.

Q. He comes from upstairs. And are you sure about that?

A. Huh?

Q. Are you sure about that?

A. **Yes.**

Q. When did he come in the house?

A. I don't know.

Q. Because he had been out in the morning.

A. I don't know.

Q. Well, I mean you were up?

A. I was up.

Q. You said you had been up since 10:00 in the morning? [Note: His previous testimony was 9:30 to 10:00 a.m.]

A. Yes.

Q. Okay. So when does he come in or is there some way that he can go upstairs and you not see him?

A. **No.**

Q. Okay, so when does he come home?

A. **I didn't see him.** He had to have come home before I woke up.

Q. Well, that would have been sometime before 10:00 though?

A. Yes.

¹⁰ "Doby" is Alfred Dewayne Brown's nickname.

- Q. And that can't – that doesn't make sense either. That's not making sense either.
So I'm asking you when does he come home?
- A. **I didn't see him come home.**

Grand Jury Testimony of Reginald Jones, April 21, 2003, HC/BROWN-8840-41 (emphasis added).

There is absolutely no reason for Jones not to have been called during trial as a defense witness. It is unknown whether Jones's exonerating statements were disclosed to the defense. For whatever reason, Brown's trial counsel never even talked to Jones. Thus, the jury never heard from this legal adult who provided clear testimony consistent with Brown's innocence. In any future trial, Jones would likely be the first defense witness called to the stand.

E. ONE TALL, TWO SHORTER

Vanan Saukam was a customer of Leo Foisner who was present during the attempted robbery of Foisner's Kwik Kash at 7:30 a.m. on 4/3/2003. OR 2.235. He told police when interviewed seven days later that he saw all three suspects near the next-door gas station/convenience store. *Id.* He said that one man was tall and two men were shorter, about his height, 5'8''. *Id.* In the line-up on April 11th, he didn't ID anyone, but said that both Glaspie and Brown were both tall enough to be the "tall" man. *Id.*

Sheikah Mohammed Afzal was the manager of the furniture store next door to the site of the ACE murders, which occurred between 9:39 a.m. and 9:46 a.m. on 4/3/2003. OR 2.183. He told police two days later that shortly before the murders, two black men came into his store. *Id.* One man was tall and the other man was shorter. Afzal talked to the tall man about bedroom furniture. *Id.* He only talked to the tall man, not the shorter man. *Id.* Glaspie admits that he was the tall man who

talked to Afzal. OR 2.328. Glaspie and Joubert agree that the other (shorter) man was not Joubert. *Id.*; HC/BROWN-29551.

James Wheat, a tow truck driver, is the only eyewitness who saw the suspects leave the scene of the ACE murders shortly after 9:46 a.m. on 4/3/2003 and drive away. OR 2.150. He told police on 4/4/2003 that he saw three black males exiting the store going toward a white Grand Am. *Id.* One tall man entered the car on the right side and two shorter men entered from the left side. *Id.* The vehicle backed up and left the parking lot going eastward on the feeder road. *Id.* Wheat ran to check on Officer Clark and used Officer Clark's microphone to call police dispatch. *Id.*

If only one witness commented on a height disparity of three suspects, it might be discounted somewhat because such descriptions are sometimes unreliable. [Note: During Brown's trial, ADA Rizzo was plainly aware of the height issue, and on re-direct examination of Wheat tried to emphasize his distance from the store (50-60 feet). Trial Transcript (Brown) Vol. 29, pg. 63.] However, when three different witnesses – each describing different times and locations – make the same or similar observations about the heights of the suspects, they should be heeded.

One tall man and two shorter men were involved in the crimes.

Glaspie is reportedly 6'5. Harris Co. Dist. Clerk Website. He is quite tall, and was undeniably present. He is, therefore, the "tall man" of the three suspects. Further, Glaspie admitted **he** was the (tall) man who talked to Afzal. OR 2.328. The other two suspects should be noticeably shorter than Glaspie.

Joubert is 5'11." Harris Co. Dist. Clerk Website. He is noticeably shorter than Glaspie, and therefore one of the two shorter men. Joubert said he did not enter the furniture store and Glaspie agrees with Joubert on this point. OR 2.328; HC/BROWN-29551. The question, then, is the identity of the other shorter man.

Alfred Dewayne Brown is 6'2.” Harris Co. Dist. Clerk Website. He is also tall (particularly when viewed from the perspective of a shorter man), and not a logical choice for the third suspect.

Ernest “Deuce” Matthews is 5'9”. Harris Co. Dist. Clerk Website. He is noticeably shorter than Glaspie. LaTonya Hubbard informed the police on 4/3/2003 that shortly before the ACE murders she saw Matthews with Glaspie and Joubert at the gas station on Telephone Road near Alameda-Genoa “near a check cashing place.” (Foisner’s Kwik Kash). OR 2.144. Each of the three men were well known to her. *Id.* She saw them putting gas in a white Grand Am. She said she knew all three from the VA, that they hung out there and sold drugs. *Id.*

Alisha Hubbard told police on 4/3/2003 that shortly before the ACE murders she saw Glaspie, Joubert, and Matthews together that morning by a white Grand Am at the VA. OR 2.141. She said that Glaspie was holding his .45 pistol (she had seen it before). *Id.* She saw them drive away, and was told later that morning by George “Ju-Ju” Powell that Glaspie, Joubert and Matthews had robbed a check cashing place that morning and that a police officer had been killed. *Id.*

It is unclear from the file why, in light of this eyewitness evidence from the date of the murders, there was no significant investigation of Matthews as the third suspect. His girlfriend Trina Thomas, who had just been released from jail on a forgery charge, told HPD that Matthews was with her the morning of the murders. OR 2.063. However, Matthews was never placed in any line-ups for other eyewitnesses (such as Saukam, Afzal and Wheat) to view.

Aaron “AB” Brown, half-brother of Alfred Dewayne Brown (same mother, different fathers) is 5'6.” Harris Co. Dist. Clerk Website. He plainly qualifies by height for consideration. Joubert told investigators that he spent the night with “AB” Brown and his girlfriend the night before the murders. HC-BROWN-29551. This was confirmed by “AB” Brown’s girlfriend Kishone Jefferson. OR 2.314. “AB”

Brown talked to Joubert by phone at 1:51 a.m. the night before the murders. Glaspie called him at 10:27 a.m. and 10:53 a.m. the morning of the murders and later that afternoon. HC/BROWN-53969. Glaspie said that he and Joubert (and Brown) went to “AB” Brown’s apartment to pick up a “jacket” prior to the crimes that morning. OR 2.327. Several witnesses, including Kishone Jefferson, Alisha Hubbard, Jero Dorty, and Ericka Dockery, told investigators that “AB” Brown helped dispose of one of the murder weapons and some of the clothes used during the crime. OR 2.332; Hubbard statement of 5/7/2008; Dorty interview (audio) on 5/3/2003; Dockery letter to Judge Ellis – HC/BROWN-31654. Ericka Dockery said that “AB” Brown threatened to kill her about her testimony. *Id.* However, just like Ernest “Deuce” Matthews, despite Aaron “AB” Brown’s short height and his personal relationship with Glaspie and Joubert, he was never considered a suspect and was never placed in any eyewitness line-ups.

Jero Dorty is 5’11.” Harris Co. Dist. Clerk Website. He is, therefore, noticeably shorter than Glaspie. He was known by investigators to be close to Glaspie and Joubert. On May 3, 2003, ADA Rizzo discussed with Dorty a plea agreement which included Dorty wearing a wire and seeking the weapons used in the ACE murders. Interview with ADA Rizzo, May 3, 2003. However, Dorty was never considered a suspect for the third man at the time of the investigation. In a lengthy interview with ADA Inger Hampton on 5/24/2011, Joubert named Dorty as the third man, and provided significant detail regarding Dorty’s role in ACE murders. Materials provided by Brown’s counsel, Tab 18. (Later, Joubert recanted the naming of Dorty during a police audio interview in 2015.)

Of course, the second shorter man may not be any of these suspects. He may be someone else entirely, perhaps someone whose name was not even part of the initial investigation.

F. MS. ALFREDIA JONES

Apart from Glaspie's self-serving testimony (as part of his plea deal) that Joubert killed Ms. Jones, the evidence in this case suggests that Glaspie himself was her murderer.

Glaspie admitted during Joubert's trial and Brown's trial that his personal .45 caliber pistol (a custom gun with a laser sight he was reportedly quite proud of showing off at the VA), was used to kill Ms. Jones. Trial testimony (Joubert) October 7, 2004, Vol. 29, pg. 156; Trial testimony (Brown) October 13, 2005, Vol. 31, pg. 171. This fact was confirmed by the forensic evidence. OR 2.035.

One day after the murders, **Lamarcus Colar** told police that after he got home from school on 4/3/2003, Glaspie was in Colar's kitchen at the VA (#253) with Joubert. HC/BROWN-12093 (Audio). He heard Glaspie talking on his cell phone, and Glaspie said "*Bitch got out of line, I had to shoot her.*" *Id.* On April 28, 2003, Colar testified before the Grand Jury. HC/BROWN-9069. He recalled that on the day of the murders, 4/3/2003, he got home from school around 10:30 a.m. or 11:00 a.m. HC/BROWN-9088. He heard Glaspie on his phone say "*Bitch got out of line, I had to shoot her.*" HC/BROWN-9098. On May 12, 2015, Colar was interviewed again by the police. Police Re-Investigation Report, Supplement 18. He said that when he came home from school he saw Glaspie and Joubert in his kitchen. *Id.* He heard Glaspie on the phone saying: "*This Bitch was tripping, she got out of line and I did what I had to do.*" *Id.* Colar said Glaspie said this several times. Colar said that there was a third male in the living room but Colar didn't know who it was because it was dark and they didn't talk.¹¹ *Id.*

On April 27, 2015, **Kelvin Smith** told police that on the day of the crime he heard a commotion outside his apartment at the VA. Police Re-Investigation Report,

¹¹ In some earlier versions he identified Brown, then changed and said it was probably Jero Dorty.

Supplement 4.2. He went outside and heard Glaspie say “*I had to shoot the bitch*” repeatedly. *Id.* Smith added that Glaspie seemed “f—ked up.” *Id.*

On May 7, 2015, **Richard Carraway** told police that after the murders Glaspie came over to see him. Police Re-Investigation Report, Supplement 11. He said that Glaspie told him that he used his .45 with a laser beam during the crime. *Id.* Carraway had seen Glaspie’s .45 before. *Id.* Carraway said Glaspie told him that he shot both the woman and the cop. *Id.* He said that Glaspie complained to him that after the crime that he got stuck in traffic getting away from the scene. *Id.*

Law enforcement and ADA Rizzo had the admission of Glaspie (confirmed by forensic evidence) that Glaspie’s gun was used to kill Ms. Jones. They had Joubert’s statement that Glaspie murdered Jones. OR 2.120. They also had Lamarcus Colar’s testimony of Glaspie’s admission (now confirmed by Kelvin Smith and Richard Carraway) that Glaspie murdered Ms. Jones. On August 25, 2004 (two months before the trial of Joubert and 14 months before the trial of Brown), ADA Rizzo received an email from DA law clerk Jason Del detailing the testimony of Colar about Glaspie: “Lamarcus gave an oral statement on April 4, 2003, a written statement on April 5, 2003, and testified before the Grand Jury on April 28, 2003. In each of these three statements Lamarcus states that he overhears Shon on the cell phone saying that he (Shon) had to shoot Mrs. Jones.” Mr. Del quoted the content of each statement, which were virtually identical. In each of Colar’s statements, Shon was quoted as saying “Bitch got out of line...I had to shoot her.”

Despite this evidence, the State allowed Glaspie to avoid any form of murder charge by testifying against Joubert and Brown. Glaspie’s story that he *loaned* his prized .45 to Joubert and then went into an armed robbery unarmed makes no sense, yet that is the story he was allowed to tell at both Joubert’s trial and Brown’s trial.

Glaspie’s testimony about the murder of Ms. Jones, in light of the other evidence in this case, significantly calls into question his veracity regarding other

matters, including his identification of Brown as the third participant in the crimes and specifically as the murderer of Officer Clark.

G. OFFICER CHARLES CLARK

[Note: the undersigned is by no means a trained forensic examiner. Therefore, this analysis must be considered in terms of “possibility.”]

Glaspie testified at Brown’s trial that all three men were inside the ACE office, and that they heard a police radio and looked and saw a police officer a step or two inside the lobby. Trial Testimony (Brown) October 13, 2005, Vol. 31, pg. 119. Glaspie said that Brown moved directly toward the police officer in the lobby and Glaspie heard shots. *Id.* Glaspie testified that Joubert said “P this bitch played us,” and killed her (with Glaspie’s gun) as she was pleading for her life. *Id.* Then, according to Glaspie, the men went past the fallen police officer to the car and drove away. *Id.*

According to the forensic evidence, Officer Clark approached the glass front door of the ACE office and observed armed suspects inside the business. OR 2.034. Officer Clark advised the HPD dispatcher to speed up the other units since the suspects were armed. *Id.* Officer Clark opened the door and fired a shot at a suspect with his service weapon, a Browning Hi-Power 9MM pistol. *Id.* The shot struck the wall above the outer “mantrap” door. *Id.* He then moved from the front of the door to the side of the door, while holding the door open. *Id.*

Officer Clark was found later on his back between the ACE store and the cell phone shop next door. OR 2.278. He had a grazing gunshot wound to the back of his right shoulder. OR 2.056. In a lower pane of one of the windows of the cell phone shop, there was evidence of a bullet strike. OR 2.278. There was an arc of broken glass and glass fracture close to the bullet hole. *Id.* Blood appeared to be splattered on the neighboring panel. *Id.*

Officer Clark died from a second gunshot wound in the hairline directly above the center of his forehead. OR 2.056. This bullet did not exit. *Id.* It fragmented and eventually lodged in the rear of his head. *Id.* Dr. Gonsoulin, who performed the autopsy, stated that it appeared Officer Clark had his head down when he sustained the fatal gunshot wound. *Id.* When the slug was removed from the base of Officer Clark's brain, it appeared to be a .380 caliber bullet. OR 2.123.

According to the forensic investigation, two .380 caliber cartridge casings were observed on the pavement outside the ACE Store. OR 2.023. One of the .380 casings was observed on the pavement of the parking lot near the left rear tire of Ms. Jones's vehicle. *Id.* The other .380 casing was found on the raised sidewalk near the storefronts. *Id.*

As the first suspect who cooperated, Glaspie's story was wholly adopted by law enforcement. OR 2.034. However, Glaspie's story assumes (1) that Brown decided to leave a protected position behind the "mantrap" door and rush directly toward an armed police officer who had just fired a pistol at him, and (2) that Officer Clark turned his back on Brown as Brown came toward him, causing Officer Clark to be shot in the back right shoulder. Neither of these events seems likely. Further, Glaspie's story does not explain the presence of splattered blood and a bullet hole on the outside glass behind Officer Clark, suggesting a shot from the direction of the parking lot rather than from inside the ACE store. Finally, Glaspie's story does not explain the .380 shell casings found outside – not inside – the ACE store, one casing many feet away from the front door where the cars were parked and one casing closer in on the sidewalk. This evidence suggests that Officer Clark was shot by someone outside – not inside – the ACE store.

Only one suspect admitted being outside the ACE store at the time Officer Clark was killed: Elijah Joubert. Although he originally generally agreed with Glaspie's story (*after* the police played Glaspie's recorded interview to him) (OR

2.119), he later recanted and said Brown was not involved in the crime. Joubert Affidavit 4/22/2008. On 5/24/2008, Joubert was interviewed at length by ADA Inger Hampton. HC/BROWN-29551. As described above, Joubert said in the interview that the third man was Jero Dorty, not Brown. (Note – he recanted this in 2015, but did not re-name Brown). *Id.* For the purpose of this discussion, it is significant that Joubert told ADA Hampton that Glaspie (and Dorty) went into the ACE store while Joubert stayed in the car. He said that when the police car pulled up, he ducked down in the seat.

It makes sense to have one member of the criminal threesome stay behind by the get-away car. That person would certainly duck down when a police car pulled up. If this person watched Officer Clark go in then come back out, that would provide an open shot from behind Clark, which could have caused the wound to Clark's back right shoulder. This could explain the first .380 casing found near Ms. Jones's car. We now know that Officer Clark's gun jammed after his first shot. OR 2.034. Officer Clark was probably squatting at the time he was shot in the back right shoulder, making a smaller target for the man on the inside while trying to unjam his gun. The bullet hole behind Officer Clark was low in the window pane. The impact to Officer Clark's back right shoulder may have caused him to turn counter-clockwise. He naturally would have looked back toward the direction of the sound. He would have continued to try to unjam his gun. If a suspect on the outside saw that Clark was defenseless, he would have had an opportunity to rush Clark and fire the lethal shot directly into his forehead. Clark's head was slightly down, suggesting that he was still low trying to unjam his gun. The second .380 casing was on the sidewalk.

George "Ju-Ju" Powell testified that "everyone" at the VA had .380s, that there were "a bunch" of them around. Grand Jury Testimony 4/30/2003, HC/BROWN-09193. Unlike Glaspie's custom laser-sighted .45 which was used to

kill Alfredia Jones, .380s are inexpensive and common. Officer Clark's killer used one. Under the available evidence, the killer may have been Elijah Joubert.

H. HOW BROWN WAS INDICTED

The Grand Jurors that gathered in April 2003 under the supervision of ADA Rizzo to inquire about the ACE murders were, it is hoped, unusual in modern day America. They routinely threatened and intimidated witnesses to give desired testimony. Examples below are portions of the testimonies of Tonika Hutchins and Ericka Dockery. Similar attempts to manipulate Reginald Brown are quoted above in section V, D of this report.

The transcripts speak for themselves of a Grand Jury process run amok, without restraint or control. Rather than serve as a shield against wrongful prosecution, they acted like a 17th Century Star Chamber.

Tonika Hutchins Grand Jury Testimony

The following excerpt from the Grand Jury testimony of Tonika Hutchins, Glaspie's girlfriend, reveals much about the Grand Jury's tactics.¹²

Q: When was the last time you smoked (marijuana)?

A: Uh, yesterday.

Q: Yesterday?

A: Uh-huh.

Q: What time?

A: Probably around – about 8:00 or 9:00 last night.

Q: You didn't smoke this morning being nervous and stuff coming to the grand jury?

A: No, ma'am. No, sir.

Q: You're lying.

MR. RIZZO: You look like it.

¹² Note: In the following transcripts, questions by grand jurors will be preceded by a "Q." Questions and comments by the Forman and ADA Rizzo will be specifically identified.

09052

Q: What did your father have to say about this when he found out --

A: Uh --

Q: -- you were hanging around with this kind of guy?

Q: What did he say to you?

A: My father is not really talking to me right now.

Q: He's not talking to you right now. Why?

A: Because of this.

Q: Because of this. Because he's got a daughter that's hanging out with a hoodlum who probably killed someone. [Note: the Grand Juror was referring to Glaspie].

Q: And taking drugs herself.

Q: Big time.

Q: Because it's not just marijuana you're taking.

Q: Because he knows you're lying and not telling the truth.

A: You can actually test my blood. That's the only thing that I take is marijuana and I'm not high right now. I'm in front of a jury. My nerves are bad. I'm nervous. I've been going through this.

Q: You should be nervous because you're lying.

Q: Have you ever been in jail before? You've never been in jail before. You think your nerves are bad now.

Q: Have you ever gone to, uh --

Q: Wait till they put you in a jail house.

Q: -- to acting school?

A: No.

Q: Well honey, you would be center stage.

Q: Wait till -- you're a beautiful lady. Wait till they put you in the jail house with them hoochy mommas down there. When they get through with you do you think your nerves are going to be bad? More than your nerves are going to be bad.

We're doing everything we possibly can to keep you from going to jail.

A: And I told you-all what he told me.

Q: No you're not. We know for a fact you are lying.

HC/BROWN-09037-9053.

Threatening a young female witness that she will be sexually assaulted in prison if she does not testify as desired, especially when done by a group of citizens who were supposed to be acting as a bulwark against unjust prosecution, is appalling.

Ericka Dockery Grand Jury Testimony

The Grand Jury testimony of Ericka Dockery is difficult to read. The foreman, James Koteras, was an active duty Houston Police Officer. (According to HPD pension system records, he retired five years later on March 21, 2008.) Somehow, ADA Rizzo did not feel it was a conflict of interest for a police officer to lead a Grand Jury in investigating the murder of a police officer.

Immediately before her Grand Jury testimony, Dockery was arrested on old traffic tickets and spent three days in jail. It seems unlikely this was a coincidence. Certainly, this experience was used as a threat against Dockery.

Pg. 24, lines 5-11:

- Q: And then you don't leave out of there until what time?
- A: 8:30.
- Q: Okay. When you left was Alfred still there?
- A: Yes. He was on the couch asleep. Because I told him, "When I get home, I want you gone."

Pg. 26, lines 14-20:

- Q: Okay. And where was he at when you left your place?
- A: Where who was?
- Q: Where was Alfred at?
- A: He was laying on the couch still. He was still -- he never moved. He was still laying on the couch. He never moved.

Pg. 31, lines 21-25; Pg. 32, lines 1-4:

- Q: Did Shawn come by and pick up Dobie before you left?
A: No.
Q: Are you sure of that?
A: Positive. Because when I left out that house at 8:30, Dwayne was still laying on that couch.
Q: Yeah. And what time did you get to work?
A: I get to work -- I leave at 8:30 -- I get to work about, about 8:55.

Pg. 37, lines 6-19:

- Q: And then he called you? Is that right?
A: Yes.
Q: Okay. And it would've been about ten o'clock?
A: Yes.
Q: Is there a caller ID on Miss Berry's phone?
A: Yes, sir.
Q: Okay. And did you look at it?
A: She looked at it.
Q: She looked at it?
A: Yes.
Q: She told you?
A: Yeah. She told me, "Erica, it's your house."

Pg. 43, lines 3-7:

- Q: I'm talking about over at the place where the robbery happened?
A: He said he wasn't there.
Q: He's still telling you he wasn't there?
A: Yes.

Pg. 45, lines 2-3:

A: He said, "Erica, I didn't have anything to do with it." That's what he told me.

Pg. 45, lines 18-20:

A: He, he don't talk that's what I'm saying. When I asked him, "Dwayne, did you do it?"
He said he didn't do it.

Pg. 49, lines 10-25 through Pg. 51, line 2 (all questions in this section by Mr. Dan Rizzo):

Q: MR. DAN RIZZO: (prosecutor confers with investigator) I guess the one thing I need to ask you -- I know that -- I want to make sure that you are given an opportunity to correct any mistakes that you may have made in here. Okay? Anything that you have said that may be a misstatement, that may be a lie, under oath, a Grand Jury could decide was Aggravated Perjury--

A: I understand what you're saying.

Q: Okay. Let me finish.

A: Go ahead.

Q: Ummm...Grand Juries are allowed to give the witness an opportunity to correct any statements or misstatements, false statements to the Grand Jury -- misleading statements to the Grand Jury.

A: Okay.

Q: And what I want to do is give you that opportunity if you want to. I know that you have children.

A: Yes.

Q: I know that you work -- you were working two jobs. And you never been in trouble, as far as I know.

A: Yes.

Q: And I do know that you love Dobie.

A: Not much better than my kids. I love my kids more.

Q: I would imagine so. But if there were -- and I can't tell you about the investigation -- but if there was other evidence, from other sources, including admissions--

A: Uh-huh. (affirmative)

Q: --from Dobie, as to where -- to him being
out there.
A: Uh-huh. (affirmative) All I can tell you--
Q: And let me finish.
A: Oh, go ahead. Go ahead. Go ahead.
Q: And if you are making statements that are
false to this Grand Jury. You've made false,
material statements, that you know are false, then I
want to give you an opportunity right now --
A: Uh-huh. (affirmative)
Q: -- to correct any of those. Okay?

Pg. 54, line 25 through 55, lines 1-9:

Q: It was approximately 8:30 --
A: It was approximate. He was --
Q: --when you left?
A: --still on the couch.
Q: Okay. Is there anything you want to change
with that?
A: That's it.
Q: Is that -- see, I have to ask you "Yes,"
or, "No."
A: Sir, I don't know anything else.

Pg. 55, lines 19-25:

Q: And Dobie was there sometime between 8:15
and 8:45?
A: Yes.
Q: When you left?
A: When I left, yes.
Q: And that's something you don't want to
change?

Pg. 58, lines 15-25:

- Q: Okay. Between 6:00 and 8:30 he was there?
A: He was there.
Q: Okay. And that's the story -- that's what you want to say?
A: That's all I can do is testify to what I -- what I did.
Q: Okay.

MR. DAN RIZZO: If you could wait one second outside here.

A: Sure.
(Grand Jury takes a break at this time)

Pg. 61, lines 17-25; Pg. 62, lines 1-5:

- Q: I want to make sure that you understood the question that the Assistant D.A. asked you earlier about, "Was there any way that you might want to change your mind on some of the testimony that you gave here this morning?" And the reason I am ask you this is because you seem like a good, nice, young lady--
A: I am.
Q: --a hard-working young lady-
A: I am.
Q: And if we find out that you're not telling the truth, we're coming after you.
A: I, I know that.

Pg. 62, lines 12-25; Pg. 63, lines 1-15:

- Q: And if we find out that you were lying, under oath, you can be in serious trouble.
A: I understand.
Q: And you won't be able to get a job flipping burgers.
A: Yes, sir.
Q: You got three children that you're trying to take care of. And so that's why I'm asking you, and I'm appealing to you--

A: It is the--
Q: Let me finish.
A: Oh, go ahead.
Q: --to make sure that
you're telling the truth. Tell the guy the truth of
the question that he's asked you. Because you won't
have another opportunity. Once you leave out of this
room--
A: Uh-huh. (affirmative)
Q: --it's over with.
A: I understand.
Q: And then they come after
you.
A: Yes. I understand.
Q: And then who's going to
take care of your three kids? Nobody.
A: Nobody.
Q: Dobie sure ain't going
to take care of those kids.

Pg. 75, lines 9-19:

Q: Did he say anything about why he was there
that day?
A: Why he was where?
Q: Did he admit to you that he was at the Cash
place?
A: He never admitted that he was with them.
He never did. Never.
Q: Never said anything to you about that?
A: He never said -- he never said he was with
them. He never said he had -- he didn't go. He
never said. Never, never.

Pg. 80, lines 11-25; Pg. 81, lines 1-20:

Q: Because if you
implicated in any way, you know them children are
there in that house-

A: Yes.

Q: --and they're going to
need, you know, some parental guidance in the future.

A: I know. And I love my
kids. I love them with all my heart.

Q: I'm so glad to hear you
say that.

A: I love my kids. And I'm
not going to jail for nobody.

Q: Okay.

Q: You know by working in
the home health care, and there's a felony charge
brung [sic] against you, you know that's over with.

A: I know. Everything is
over.

Q: You won't be able to go
get a decent job anywhere.

A: Nowhere. I already
know.

Q: And it's not worth
hiding behind no man.

A: Oh, it's not. It's not.
I can always get another man, but I could never get
another life.

Q: Nor is your children.
That's why he's constantly asking you if there's
anything you want to change before you leave.

A: You know, maybe I'm
misunderstanding the question. But I'm trying to
answer the best way I can.

Q: It's so important.
Because he's not worth it.

Pg. 82, lines 15-20:

FOREPERSON: Hey, Dan. What are the
 punishments for Perjury and Aggravated Perjury?
MR. DAN RIZZO: It's up to ten years
 in prison.
FOREPERSON: In prison.
Q: Oh, no.

Pg. 82, lines 24-25; Pg. 83, lines 1-14:

Q: (BY MR. DAN RIZZO) Let me -- let me ask you
 something. Everybody knows Dobie over at the VA?
A: He -- yes they know him. Yes.
Q: People saw him out there -- I'm not talking
 about one person, I'm not talking about two, and I'm
 not telling you what the evidence is and what we
 know.
A: Uh-huh.(affirmative)
Q: People saw him out there at seven o'clock,
 and -- because they know him.
A: Yes.
Q: They know him.
A: Yes, they do. He grew up down there.
Q: I'm saying if people saw him out there.
 And your testimony is that he was still at home at
 7:20, somebody's lying.

Pg. 87, lines 15-21:

Q: What are you protecting
 him from?
A: Ma'am?
Q: What are you protecting
 him from?
A: Ma'am, I'm not
 protecting him.

Pg. 94, lines 19-25; Pg. 95, lines 1-9:

Q: But you don't know if he
was there when you came back?

A: That's what I'm saying.
He was there -- he was there -- you all confusing me.

Q: No, we're not confusing
you. We just want to find out the truth. Because
what we're here to do is make sure that you are
telling the truth and helping you. Because I don't
want to see you go to jail. You got three kids.

A: I don't want to see me
going to jail either.

FOREPERSON: So, he wasn't on that
couch when you left, is probably what you want to
say, right?

A: What I'm saying -- I
don't know what I'm trying to say now.

Pg. 102, lines 17-25; Pg. 103, lines 1-2:

A: You talking about
Thursday morning?

FOREPERSON: Yes, ma'am. That's why
we're really pulling this testimony. That's what
we're trying to get to you. Like we said, and if you
are -- the evidence shows that you are perjuring
yourself then you know the kids are going to be taken
by Child Protective Services, and you're going to the
penitentiary and you won't see your kids for a long
time.

A: I understand.

Pg. 105, lines 2-25:

- Q: But you don't – you
can't tell us if Alfred was on that couch or not.
That's what we after. Was Alfred on that couch or
was he not? You just assumed he was on that couch?
Did you look over there to see was he on that couch?
Or did you just come running down those stairs and
went out that door? We've given you all the
opportunities in the world, young lady. Because you
got three kids.
- Q: Well, I don't know about
you guys, but I've just about heard enough.
- A: I'm -- I'm telling you
what I--
- Q: I agree.
- Q: I do too.
- Q: Me too.
- A: I'm telling you--
- Q: And you haven't
convinced any of us.

Pg. 106, lines 1-14:

- A: No, when I came down
those stairs -- when I came down those stairs -- I'm
trying to remember. I really am. Because I have a
lot going on.
- Q: This is the day you--
- Q: You're going to have a
lot more going on.
- Q: --off early. And surely
you can remember the day you get off early.
- Q: Erica. It's not worth
it. It's not worth it. If you're trying to
protect this young man –
- A: I'm--
- Q: --it's not worth it.

Pg. 108, line 1-4:

Q: She's not going to
change.

FOREPERSON: Okay.

Q: That's it young lady.

Pg. 108, lines 15-19

A: Is there something you
wanted to ask me?

Q: No, I just want you to
be truthful with us. I hate to see you walk out that
door and we find out later that you lied to us.

Pg. 109, lines 2-4:

Q: Next time it's going to
be the cops and the Child Protective Services coming
to take your children.

Pg. 109, lines 19-25:

MR. DAN RIZZO: Let me try and ask you
one thing too. You have said -- you have said that
-- and you were very firm he was there at 8:30.
You were firm, it was 8:30.

A: I was just saying--

Q: Let me just finish.

A: Okay. Go ahead.

Pg. 110, lines 17-23:

MR. DAN RIZZO: If you remember what it is -- we're not
going to play around anymore. The Grand Jury is
already upset because it is obvious that you are not
telling us everything. So, what we want to do is
we're just going to ask -- I'm just going to ask you
once here, and you can tell from the Grand Jury's
expressions that they done [sic] with you.

Pg. 111, lines 20-25; Pg. 112, lines 1-3:

A: All I know is when I came back down. I'm
sorry, ma'am. I'm just really trying--
Q: So, nothing's changed?
Q: You're just repeating
yourself. I mean either he was there or he wasn't.
That's all you need to say.
A: My days is all mixed up.
MR. DAN RIZZO: So, you don't
remember, right?

Pg. 113, lines 12-23:

FOREPERSON: Okay. I think we've
heard enough, Daniel. That's enough. Thank you for
coming in, ma'am.
A: But I'd like to say one
thing before I leave. When I walked out that house,
I don't -- I don't -- I can't recall. I can't
recollect. I can't remember. I'm trying my best to
remember.
Q: All we wanted was a
"Yes" or, "No." Was he or was he not in that house
when you left the last time? "Yes," or, "No?"
Q: Think about your kids.

Pg. 114, lines 10-25; Pg. 115, lines 1-20:

Q: One minute, Erica.
He wasn't in the house when you put your kids on the bus
either, was?
A: I'm trying to remember.
Q: Think about your kids,
darling.
A: I'm trying to remember.
FOREPERSON: That's what we're
concerned about here, is your kids.
Q: He was not at the
house--
FOREPERSON: We're as much concerned
about your kids as you are. So, tell the truth.

Q: He was not in the house
when you put your kids on the bus, was he? Tell the
truth, girl.

A: Yes, he was there.

Q: Okay.

A: Yes, because--

Q: Okay.

A: No, no, no. I'm gunna
tell you --

Q: No, you answered. You
answered my question.

A: I'm going to tell you
why I know he was on the couch.

Q: I don't care. You
answered the question.

A: Okay.

Q: Your answer is, "No,
that he was not in the [sic] when you got ready to go to
work?" That is your answer?

A: I don't -- I don't -- I
don't think he was. I don't -- I don't think.

Q: We can't--

A: No, no. He wasn't
there.

Q: Thank you.

A: He wasn't. No.

Q: Okay. All right.

Pg. 118, lines 9-13:

MR. DAN RIZZO: Okay. If you just
have a seat outside, we may recall you.
(witness exits grand jury room at this time)
(witness recalled before the Grand Jury)

Pg. 128, lines 19-23:

Q: Oh, you were in jail this weekend?

A: Yes, sir. That's why I said I haven't been
to sleep. I'm tired.

Q: How much time you do in jail?

A: Three days.

Pg. 131, lines 24-25; Pg. 132, lines 1-11:

MR. DAN RIZZO: You know, you're lying
 again, aren't you?

A: No, I'm not.

FOREPERSON: You were doing good
 when you came back in here now.

A: No, I'm not. I'm
 trying--

FOREPERSON: We don't want to start
 all over again on this.

A: I can't -- I can't
 remember what IHOP--

MR. DAN RIZZO: I don't -- I don't
 know why we even talked to you.

Pg. 136, lines 17-25; Pg. 137, lines 1-6:

Q: You see that man right
 there? Babe, before we leave here, and once we
 adjourn, that man sitting right there is the foreman,
 is going to sign off on the paperwork -- you know
 what's going to happen because you lied to us. You
 think you spent three days in jail. Them's probably
 the three roughest nights you had away from your
 kids. It's going to be a lot longer than that if he
 sign off on the paperwork. And he just told you, we
 all tired and ready to go home. We been here since
 nine o'clock this morning.

A: I haven't been to sleep
 in four days.

Q: But you did something
 wrong and we didn't.

Pg. 137, lines 9-19:

MR. DAN RIZZO: What else -- what else
 have you lied to us about? We know you did it.

A: About -- what you mean?

Q: We want to know what else you lied to us
 about.

A: That's--

Q: Did Dobie admit to doing this?

A: Did he admit it to me?

Q: Did he admit it?
A: No. When I asked Dwayne, "Did he do it?"
He never admitted to me. He never did.

Pg. 142, line 25; Pg. 143, lines 1-10:

MR. DAN RIZZO: I don't really think
that you're afraid. Because I don't think you really
do get afraid. I think what I think it is is I
think that you're up to your neck involved in this
deal. And I'll tell you why. Because we know that
you made a phone call to Shawn at 10:00 -- I'm sorry,
to Ghetto -- at 10:30 approximately. Don't look at
me like that--

A: No, no. I'm just--
Q: --because I'll end it right here.
A: Go ahead.

Pg. 143, lines 24-25; Pg. 144, lines 1-15:

Q: Did you ask -- did you call Elijah
Joubert, that would be April 3rd -- Thursday, April
3rd at approximately 10:26? Did you call his cell
phone? From Miss Berry's house?

A: From Miss Berry's house?

Q: "Yes," or, "No?" Just answer the question.
"Yes," or, "No. "

A: No.

Q: If you didn't--

Q: Bingo.

MR. DAN RIZZO: I don't think I have
any more questions to ask her.

FOREPERSON: I don't either.

A: I never called -- I
never called--

Q: Girl, you just [sic] a big
mistake.

Pg. 144, lines 23-25; Pg. 145, lines 1-11:

- Q: Ma'am? Ma'am? Hold on.
You know the part about the attorney business that we
read you in the beginning?
- A: Uh-huh.(affirmative)
- Q: You better go get you
one.
- A: But I -- that's what I'm
saying, I never talked to Ghetto that day. I never
talked to any of them.
- Q: Well, it's over, ma'am.
- MR. DAN RIZZO: We're done.
- Q: We got--
- Q: I think she was with him
at the check cashing place.

HC/BROWN-08665-8810 (emphasis added).

During Dockery's testimony, ADA Rizzo twice alluded to evidence that proved she was lying and placed her at risk for perjury charges. On page 50, he hinted about "*evidence, from other sources, including admissions...from Dobie, as to where – him being out there.*" On page 82-83, he said: "*Everybody knows Dobie over at the VA...People saw them out there – I'm not talking about one person, I'm not talking about two...People saw him out there at seven o'clock, and – because they know him...I'm saying if people saw him out there, and your testimony is that he was still at home at 7:20, somebody's lying.*" There is no evidence in the file supporting either of these two statements by ADA Rizzo.

The Grand Jury transcripts provide a window to help explain why Alfred Dewayne Brown was indicted and convicted, despite the evidence of his innocence. Since his trial in 2005, the State's case against him has become even weaker.

I. CAN BROWN BE PROSECUTED TODAY?

Nearly all witnesses called to the stand by ADA Rizzo during Brown's trial have recanted their testimonies. Many have gone back-and-forth so many times that they are unusable by anyone.

For a detailed description of every changing statement of the 38 principal witnesses in this case, see Section VI of this report. The evidence of the only remaining State witnesses is analyzed below.

Ericka Dockery

Ericka Dockery, the State's chief witness against Brown, has told so many different versions of her story that any testimony she provides now would be easily discredited.

On 4/4/2003, Dockery said that on the morning of the murders, she took the children to the bus stop at 6:45 a.m., then came back and got ready for work, leaving at 8:30 a.m. OR 2.128. On 4/21/2003, she told the Grand Jury that Brown was asleep on the couch when she left at 8:30 a.m., that Brown was upstairs when she called home later and talked to Reginald Jones, and that Brown called her from her apartment around 10:00 a.m. HC/BROWN-08665. On 10/9/2003, after 7 weeks in jail on charges of perjury to the Grand Jury, she wrote Judge Ellis to tell him that at the time of the crime she did not know that Alfred Dewayne Brown was not in her apartment, and that Aaron "AB" Brown threatened to kill her if she said Alfred Dewayne Brown was not home. HC/BROWN-31654. On 12/18/2003, she "remembered" for the first time that Brown told her he was at "Shondo's" house at the time of the 10:08 a.m. call. OR 2.303. [Note: This new testimony was after she was placed in jail next to Patricia Williams.] On 1/6/2004, she told the police that she drove her children to school, and when she went home at 7:25 a.m. to grab her timesheets for work, Brown was not there. OR 2.304. On 10/13/2005, she testified

at Brown's trial that she came downstairs at 7:15 a.m. to take her children to school and saw Brown on the couch, but when she came back at 7:25 a.m. he was not there. Trial Transcript (Brown) Vol. 31, pg. 44. On 12/8/2011, she told ADA Inger Hampton that she had been pressured by the State to change her original story, and only did so because the prosecution told her they were going to take away her children – adding that she wasn't really sure about the time and never should have said a time. HC/BROWN-08334. On 5/5/2015 she said she originally told the truth to the Grand Jury, but ADA Rizzo pressured her to change her statements. Audio Disc (provided by HPD).

It is useful to compare Dockery's many variations of her story regarding Brown's 4/3/2003 location:

<u>Dockery Statement Date</u>	<u>Brown's Location</u>
04/04/2003	Brown was home the morning of the murders.
04/21/2003	Brown was asleep on the downstairs couch when she returned briefly at 8:30 a.m., was asleep upstairs later when she called, and called her from her home around 10:00 a.m.
10/9/2003	(After 7 weeks in jail on perjury charges) she did not know where Brown was at the time of the murders.
01/06/2004	Brown was asleep on the downstairs couch at 7:15 a.m., and "was no longer there" at 8:30 a.m.

10/13/2005	<u>Brown trial</u> : When she took her kids to school shortly before 7:15 a.m., she saw Brown on the couch. She came back ten minutes later to get her time sheets and Brown was not there.
12/08/2011	She did not go home after dropping off her kids at school. She was pressured by the State to change her story. She said that whenever the Grand Jury took a break, ADA Rizzo would take her to another room and threaten her and her children.
05/05/2015	The 4/21/2003 version is correct, but she was pressured by ADA Rizzo to change it. (Then she flipped again and said she did not see Brown on the couch when she returned briefly after taking the kids to school.)

It is also useful to compare Dockery's ever-changing stories about Brown's alleged jailhouse admission:

<u>Dockery Statement Date</u>	<u>Brown's Alleged Jailhouse Admission</u>
10/13/2005	<u>Brown trial</u> : She claims that when she visited Brown in prison, she asked him if he "did it." He told her he "was there."

10/31/2012	Statement to Brown counsel (tab 8): Brown <u>never</u> told her he was at the crime scene.
05/05/2015	Statement to Police: It is true that Brown <u>never</u> told her he “was there” <i>before trial</i> . (Thus, her trial testimony was admittedly false). She now claims that <i>after</i> the trial – after Brown watched her testify falsely that he said it – he said it.

Despite all these changes, Dockery consistently reported that when she came home in the early afternoon from working at Alma Berry’s house, she saw Brown on the stairwell and he said he was feeling sick. It is possible that as soon as Brown saw Dockery leave to take her children to school (sometime before Reginald Jones came downstairs to play video games), Brown simply moved from the downstairs couch to the upstairs bedroom to sleep. If so, Dockery would not have seen him on the downstairs couch when she returned briefly on her way to work to pick up the timesheets she left behind, and Jones would have seen Brown come downstairs sometime later that morning. Indeed, Dockery originally told the Grand Jury that Brown was asleep upstairs when she called and spoke to Jones sometime before the 10:08 a.m. call. This summary of events would match the unwavering statements of Jones.

Remaining Witnesses

At the end of the day, there are only three witnesses left that the State could call to try to prosecute Alfred Dewayne Brown: (1) Dashan Glaspie, (2) Sheikah Mohammed Afzal, and (3) Wilbert Green. Their prospective testimonies must be compared to the evidence of Brown’s innocence – including Patricia Williams’s

testimony in light of times and distances, the alibi testimony of Reginald Jones, and the multiple eyewitness descriptions of the suspects as one tall man and two shorter men – in determining whether a reasonable juror could convict beyond a reasonable doubt, the legal standard for actual innocence.

Dashan Glaspie

Glaspie reportedly told law enforcement he no longer wants to give any testimony in this case. However, since he is up for parole in 2020, it is anticipated he will agree to testify again exactly the same way he did in Brown's first trial. As analyzed in detail above, his testimony falls apart in light of the evidence.

There was likely insufficient time for Glaspie to pick up Brown and complete the other activities he described before the attempted robbery of Leo's Kwik Kash.

The phone calls between the apartment of Ericka Dockery and the cell phones of Joubert and Glaspie between 8:26 a.m. and 8:39 a.m. are inconsistent with Glaspie's story that Brown was at the VA with Joubert and Glaspie at this time.

Glaspie's story regarding the loan of his gun is illogical. Further, his description of the ACE murders does not match the forensic evidence. (See the descriptions of the murders of Ms. Alfredia Jones and Officer Charles Clark in Sections V, F and G of this report.)

There was unequivocally insufficient time to leave the ACE crime scene and drop Brown off at Dockery's before the 10:07 a.m. phone call from the VA.

Sheikah Mohammed Afzal

Sheikah Mohammed Afzal is now 81 years old, and all attempts by law enforcement the last few months to reach him and talk to him have been unsuccessful. He told law enforcement on 4/5/2003 that two black men came into his furniture store shortly before the murders, and that one was tall and one was

shorter. He only talked to the tall man. OR 2.183. In a line-up on that day, he gave a “possible ID” of Brown as the (tall) man he talked to, saying that the (tall) man he talked to “*might be*” Brown, and he did not ID Glaspie (who admitted he was the (tall) man who talked to Afzal). OR 2.188. During Joubert’s trial, in reference to Brown, Afzal said “I think this seems to be” the (tall) man, and added “I didn’t have much time to talk to them, just a few words.” Trial Testimony (Joubert) October 4, 2004, Vol. 26, pg. 246. Somehow Afzal’s memory improved (which is counter-intuitive) during Brown’s trial, 2 1/2 years after the “few words,” and he said that he was “pretty sure” the (tall) man he talked to was Brown.

This evidence is contradicted by Glaspie himself. The State’s case relies almost completely on Glaspie’s testimony, and Glaspie testified repeatedly that he was the (tall) man who talked to Afzal. Statement for Plea Agreement, 7/15/2004, OR 2.328; Trial testimony (Joubert) 10/7/2004 Vol. 29, pg. 156; Trial testimony (Brown) 10/13/2005, Vol. 31, pg. 119. Since Afzal did not ID Glaspie, he simply confused one tall man with another.

The identity of the shorter man Afzal saw that day is not known. Glaspie and Joubert agree that the man was not 5’11 Joubert. *Id.* Neither Ernest “Deuce” Matthews (5’9”), nor Aaron “AB” Brown (5’6”), nor Jero Dorty (5’11), nor any other potential suspect for the shorter man was placed in a line-up for Afzal to try to identify.

Afzal was a weak, uncertain witness 15 years ago. Given his age and unavailability, is unclear whether he would be able to testify in any capacity now. Even if he was, his testimony contradicts the State’s chief witness Glaspie. This is important, because when a State’s case relies on the testimony of an accomplice, there must be corroborating evidence connecting the accused to the commission of the offence. *Cathey v. State*, 992 S.W.2d 460, 462 (Tex. Crim. App.1999); *Hernandez v. State*, 939 S.W.2d 173, 176 (Tex. Crim. App. 1997).

Wilbert Green

Green was not called as a witness during Brown's trial. He is the only remaining witness who places Brown at the VA on the day of the crime who has not told multiple inconsistent stories. He gave a statement to law enforcement on 4/6/2003 that he arrived at the VA around 11:00 a.m. and watched TV for a short time. OR 2.062. Green said that after he watched TV, he was approached by Brown, who requested a ride to Ericka Dockery's apartment, and Green gave him a ride. *Id.*

Green signed a sworn statement on 4/15/2013 in which he twice stated that these events happened the day *after* the crimes, not the day *of* the crimes. Later, he went back to his original version of the story, and said he must have "misread" his 4/15/2013 sworn statement.

Green is, at a minimum, subject to cross examination over his sworn statement. However, even if his original statement is true, it is not corroborating evidence that Brown was at the scene of the crime any more than Green or anyone else on the day in question. Brown would have had plenty of time to finish the 10:08 a.m. phone call, then catch a ride from Ericka Dockery's to the VA, hang out awhile, and catch a ride back to Dockery's with Green.

Probative Value of State's Case

In evaluating actual innocence, it is imperative to consider the State's case in light of new evidence. *Ex parte Mayhugh*, 512 S.W. 3d 285, 289 (Tex. Crim. App. 2016). Here, the State's case against Brown fails on its own even without considering the evidence of Brown's innocence. None of the three remaining witnesses available to the State, individually or taken together, prove Brown's guilt beyond a reasonable doubt.

J. CONCLUSION

It is impossible to examine the conviction of Alfred Dewayne Brown without confronting prosecutorial misconduct. ADA Daniel Rizzo presided over a Grand Jury that abusively manipulated witnesses to supply evidence for a chosen narrative. He was provided notice of the existence and meaning of exculpatory evidence, failed to produce it to the defense, and avoided it during trial. Further investigation of his conduct is warranted.

The Tim Cole Act does not define “actual innocence.” The uses of the term in appeals of convictions may be analogized to the Brown case, even though the charges against Brown have been dismissed. A *Herrera* petition based on newly discovered evidence must show “clear and convincing evidence” that no reasonable juror would find the petitioner guilty. *Ex parte Elizondo*, 947 S.W. 2d 202, 208-209 (Tex. Crim. App. 1996). A *Schlup* petition based on a constitutional violation must merely show it is “more likely than not” that no reasonable juror would convict in light of the new evidence. *Id.* The Texas Court of Criminal Appeals held that Brown suffered a constitutional violation, and the Texas Supreme Court recognized the applicability of the lower *Schlup* burden of proof in a Tim Cole Act claim under such circumstances. *In re Allen*, 336 S.W.3d 696, 701, 706 (Tex. 2012). The lower burden of proof is unnecessary, however, because the evidence fully satisfies the higher burden.

Patricia Williams and Reginald Jones are the two most consistent eyewitnesses in this case. In five statements over a 12 year period, Williams said that *only* Glaspie and Joubert – *not* Brown – were in her apartment at the time of the 10:07 a.m. phone call from her apartment to Dockery’s apartment.¹³ Patricia

¹³ First Statement to Police, OR 2.230; Second Statement to Police, OR 2.273; Third Statement to Police, OR 2.310; Statement to Defense Team; December 9, 2008 (provided by Brown’s counsel, Tab 6); Fourth Statement to Police May 13, 2015, Audio Disc (provided by HPD).

Williams has no evident bias for or against Brown. She said she did not even know Brown. Reginald Jones consistently testified that Brown was in Dockery's apartment around the time of the 10:07 a.m. phone call. Brown told the police that he was in Dockery's apartment at that time. According to the evidence from Williams, Jones, and Brown himself, Brown was at Dockery's apartment at the time of the 10:07 a.m. telephone call.

There was absolutely insufficient time for Glaspie and Joubert to leave the crime scene at 9:46 a.m. in the single car used, drop Brown off at Ericka Dockery's apartment, and then drive to the VA to get on the 10:07 a.m. phone call from Williams's apartment to Dockery's apartment. This call was linked to a 10:08 a.m. phone call from Dockery's apartment to Alma Berry's house, and Brown was undisputedly on the telephone line of that call. Since Brown was at Dockery's apartment at the time of the linked call, he could not physically have been at the crime scene of the ACE murders.

The evidence indicates that the State's chief witness Dashan Glaspie murdered Alfredia Jones in cold blood, then avoided a murder charge by providing law enforcement with a name for Officer Clark's killer. There are numerous factual and logical flaws in his uncorroborated testimony against Brown. Multiple eyewitness sightings indicate that the third man was shorter than Brown. The withheld Dockery landline phone records, when combined with Patricia Williams's and Reginald Jones's unchanging testimony, are proof that Brown was not at the crime scene. By clear and convincing evidence, no reasonable juror would fail to have a reasonable doubt about whether Brown is guilty of murder. Therefore, his case meets the legal definition of "actual innocence."

VI. WITNESS STATEMENTS

CHRONOLOGICAL SUMMARIES OF WITNESS STATEMENTS AND TESTIMONY IN ALPHABETICAL ORDER

1. Sheikah Mohammed Afzal

Initial Statement to Police April 5, 2003, Offense Report, pg. 2.183

Afzal was the manager of the furniture store next door to ACE Check Cashing ("Affordable Furniture," 5700 South Loop East, Suite E). He opened around 9:00 a.m. on Thursday April 3. He was there with his employees Shoukat Hussein and Daniel Perez. At approximately 9:15 a.m. or 9:20 a.m., when there were a few customers in the store, two black males came in. One was tall and the other was shorter. They were both young. Afzal said that the tall man asked to see bedroom furniture. Afzal only talked to the tall man, not the shorter man. The two men left the store. A few minutes later Afzal heard gunshots.

Line-Up April 5, 2003, Offense Report, pg. 2.188

Afzal gave a "possible ID" ("might be") on Alfred DeWayne Brown, did not ID Joubert, and did not ID Glaspie. [Note: Dashan Glaspie is reportedly 6'5" and Alfred Dewayne Brown is 6'2." Joubert is 5'11]. [Note: Glaspie testified that he was the tall man who talked to Afzal.]

Trial Testimony (Joubert) October 4, 2004, Vol. 26, pg. 246

Afzal said that on April 3 two black men came into his store separately. When the first man came in, Afzal talked to him. When shown a photo of the suspects and asked if one was the man he talked to, he pointed toward Brown and said "I think this seems to be the person," and "I'm not sure but it seems to be." He admitted that he "didn't have too much time to talk to them, just a few words." Afzal said that after he briefly talked to one man, another man came in, then both left the store. He said that one left before the other, but he didn't remember which. After the men left, Afzal attended to the many other customers in the store that were waiting for him. Contrary to his earlier statement, he said he did not hear gunshots.

Trial Testimony (Brown) October 14, 2005, Vol. 32, pg. 159

Afzal said that he was 68 years old, with three children and two grandchildren. On the day of the crime, April 3, 2003, he opened his store at 9:00 a.m. Around 20 minutes later, two black men came into the store. They went directly to the bedroom section. Afzal talked to a man he said he was “pretty sure” was Brown. He was “80-85%” sure. Afzal said that the other man wandered around the store, then left the store, then came back in. He said that the two men then left together, walking towards the check cashing store. A little later Afzal heard a few shots (again contradicting himself), and told everyone not to leave the store.

On cross-examination, Afzal recalled that when he was interviewed by police he said he didn't know which direction the men went when they left his store because he was busy with paperwork. He recalled that in that same interview he said the person he talked to was much taller than himself, and the other man (that he did not talk to) was shorter.

Analysis

Sheikah Mohammed Afzal was crucial to the State's case during Brown's trial because he was the only witness besides Dashan Glaspie (who obtained a reduced charge and sentence in a plea deal for cooperating) who the State could use to try to place Alfred Dewayne Brown near the scene of the crime. Every other witness either merely placed Brown at the Villa Americana sometime that day, or reported some sort of hearsay.

Afzal is a disinterested witness with no connection to the VA. However, his memory changes often. In his initial statement he said he heard gunshots, but at Joubert's trial he said he did not hear them. He changed his mind about this again during Brown's trial. In his first statement, and in Joubert's trial, he said that he did not know which direction the men went when they left his store, but in Brown's trial he testified he saw them walk toward ACE Check Cashing. In his original statement he said there were few other customers in the store, but during Joubert's trial he said there were many.

Afzal is clear that of the two men that came into his store, he talked to the tall one and did not talk to the shorter one. Glaspie and Brown are both tall. Joubert and the other suspects in this case are much shorter than Glaspie. [Note: Glaspie testified that *he* talked to Afzal, *not* Brown. Afzal did not ID Glaspie in a lineup].

At Joubert's trial, which came before Brown's, Afzal's testimony was uncertain – telling the court that he really wasn't sure of the identity of the man he talked to because he only talked to him for a moment, but it "seemed" to be Brown.

At Brown's trial one year later, Afzal's memory had somehow improved and he stated that he was "80-85%" sure that the man he talked to was Brown.

Afzal was a weak witness thirteen years ago. He is now 81 years old, and all recent efforts to talk to him have been unsuccessful.

2. Judith Alford

Police Summary of Interview May 6, 2015, Re-Investigation Report, Supplement 19

Alford recalled helping Ericka Dockery write a letter to Judge Mark Ellis (who presided over the Brown case). Dockery told Alford that Dockery's boyfriend's brother (presumably Aaron "AB" Brown) was involved in a robbery and murder. Dockery told her that her boyfriend's brother killed a female employee who was working there. Alford remembered Dockery being threatened by her boyfriend's brother.

Analysis

Judith Alford is a minor figure in this investigation. All of her information is hearsay regarding things Ericka Dockery may have said. However, Dockery's reported claim that Dockery was threatened by Aaron "AB" Brown to conceal AB's personal participation in the murder is interesting.

3. Amos Alexander Bass

(Villa Americana Apartments, 5901 Selinsky Road #158, Houston, Texas)

Police Summary of Interview April 6, 2003, Offense Report, pg. 2.210

Bass told police investigators that he had no personal knowledge of the crime. He said that on the day of the crime, April 3, 2003, sometime before noon, he was in the Villa Americana parking lot and saw several people standing around a white Pontiac Grand Am. He recognized Elijah "Ghetto" Joubert and Dashan "Shon" Glaspie standing by the car. Bass said that he was 10 to 15 feet from the car and saw Glaspie leaning into the car and messing with some type of pistol. Bass said that he knows a guy named "Doby" (Alfred Dewayne Brown) but that he did not see Brown by the car.

Transcript of Interview April 9, 2003, HC/BROWN-02210 (provided by County Attorney)

Bass stated that he lived at 5901 Selinsky, Apartment #158. He said that on the day of the crime, Thursday, April 3, 2003, he took his step-daughter to school around 7:15 a.m. He returned to the Villa Americana around 7:45 a.m. and was standing around talking to a few guys outside of his apartment when he saw Elijah Joubert and Dashan Glaspie pull up in a white, four-door Grand Am. He said that Glaspie and Joubert jumped out of the car and went to the trunk, where Glaspie messed with a gun. He wasn't sure how many were in the car. He only saw Glaspie and Joubert get out. Bass said that he was only a few feet from the car. He knew the two of them for several years, and identified photos of them from arrays. He also identified Alfred Dewayne Brown out of a series of photographs as the man who knew named "Doby." He told investigators that he did not see Brown that morning. He said that he knew Aaron "AB" Brown from around the complex.

Analysis

Amos Bass was identified by George "Ju-Ju" Powell and Glaspie as being present in the Villa Americana parking lot when Glaspie and Joubert were there around 8:00 a.m. Bass knows Glaspie, Joubert, and Brown, was in close proximity to the White Grand Am when it pulled up, but did not see Brown that morning.

4. Alma Berry **(6210 Hartwick, Houston, Texas)**

Police Summary of Statement April 22, 2003, Offense Report, pg. 2.244 **HC/BROWN-06719 (provided by County Attorney)**

Mrs. Berry employed Ericka Dockery on the day of the crime. She remembers getting a phone call from Alfred Dewayne Brown at around 10:26 a.m. on April 3, 2003, the day of the crime. [Note: It was 10:08 a.m.] She knew Brown and recognized his voice. She answered the phone and handed it to Dockery. Dockery said “What?” on the phone and then ran over to turn on the television, which was showing a news broadcast of the crime. “That’s where I used to cash my checks” Dockery said.

Trial Testimony (Brown) October 12, 2005, Vol. 30, pg. 226

In April, 2003, Berry was 70 years old, disabled, and employed Ericka Dockery as a caregiver. She stopped employing Dockery because of the murders. Dockery usually arrived around 9:00 a.m. Berry knew Alfred Dewayne Brown and knew his voice. On the day of the crime, “The Price is Right” had been on the TV about 15 minutes (it came on at 10:00 a.m.) when she got a phone call. She answered and Alfred Dewayne Brown was on the phone. She is sure it was him because of his voice. He asked for Dockery, and Berry gave Dockery the phone. Dockery asked her to turn the TV to Channel 26. They did, and the news was about a robbery.

On cross-examination Berry did not remember saying “it’s your house” to Dockery (regarding the phone number on the caller ID).

Analysis

Alma Berry is a straightforward witness who provided disinterested testimony that Alfred Dewayne Brown was on the 10:08 a.m. phone call to her house.

Dockery testified during Brown’s trial that Alma Berry identified Dockery’s apartment on Caller ID. The following is how ADA Rizzo responded to this testimony during Closing Argument:

We know that she received a phone call at 10:00 a.m. She was told to turn on the breaking news. We know Ms. Berry said that she thought it was coming from her house, which is probably a mistake. As you know Ms. Berry has trouble seeing a little bit.

[ADA Daniel Rizzo, Closing Argument in Brown's Jury Trial, October 17, 2005, Vol. 33, pg. 94, line 12].

The withheld Dockery phone records make it clear that the call came from Ericka Dockery's apartment.

5. Deborah Rodgers Blair
(1441 Whiterock, Houston, Texas)

Police Statement April 20, 2003, Offense Report, pg. 2.247

On the day of the crime, April 3, 2003, Blair was inside her sister Tammie Rodger's apartment when Elijah Joubert came into her apartment and asked to use her phone. [Note: Blair did not state the time, but Rodgers said it was around noon.] He used her landline to make several calls and also asked for the television remote. At one point he was watching some sort of news broadcast. The police showed her a photograph of Joubert and she positively identified him.

Analysis

Deborah Blair places Joubert at the VA on the day of the crime, and proves that Joubert used landlines of VA residents even though he had a cell phone.

**6. Aaron Henley Brown (aka “AB”)
(Crestmont Way Apartments, 5602 Selinsky Road #79, Houston, Texas)**

Police summary of interview April 4, 2003, Offense Report, pg. 2.169

On April 2, 2003, the night before the crime, Aaron Brown saw his half-brother Alfred Dewayne “Doby” Brown at the Subway where their mother Catherine “Miss Cat” Brown worked. They argued about Aaron Brown’s girlfriend. Alfred Dewayne Brown disapproved of her. Aaron Brown said this was the last time he saw Alfred Dewayne Brown until the afternoon of April 4, the day after the crime took place.

Aaron Brown claims that on the day of the crime, April 3, he slept until 3:00 p.m. with his phone off. That evening he went to the Villa Americana apartments where he heard people saying that his brother was involved in the crime, along with Dashan “Shon” Glaspie, and Elijah “Ghetto” Joubert.

The next day, April 4, he went to the apartment of Ericka Dockery, where his brother was staying. He saw his brother watching the news about the crime and asked him if he had anything to do with it. Alfred Dewayne Brown told him no. Aaron Brown suggested that if he had nothing to do with it he should drive down to the police station and explain himself to investigators, so Aaron Brown, Alfred Dewayne Brown, and their mother Catherine Brown left their house and drove toward the station, with Aaron Brown driving. He noticed that they were being followed by police, so he pulled over and stepped out of the vehicle with his hands raised, and all three of them were arrested.

Analysis

Although Aaron Brown (known to everyone involved in the investigation as “AB”) is a central figure in the investigation, not many solid facts have been gathered about him. He is the half-brother of Dewayne Brown (same mother, different fathers); he lived near the VA and was a regular visitor there; he was very close to both Dashan Glaspie and Elijah Joubert; he was accused by Ericka Dockery of threatening her regarding her testimony (a story supported by her late husband Julius Lockett); he was accused by Ericka Dockery, Jero “JD” Dorthy, Alisha Hubbard, and his own girlfriend Kishone Jefferson of disposing of one of the guns and the clothing used in the crime. Investigators discussed wiretapping Jero Dorthy as part of a plea deal to try to recover the gun from Aaron Brown.

Contrary to Aaron Brown's statement, Glaspie, Joubert, and Kishone Jefferson (Aaron Brown's girlfriend) each told investigators that Aaron Brown was awake during the morning of the crime and interacted with them. Glaspie's testimony is that Glaspie, Alfred Dewayne Brown, and Joubert went to Aaron Brown's house to pick up a jacket, knocking on a window to wake him up. Both Joubert and Jefferson told investigators that Joubert slept at Aaron Brown's house the night before the crime, and was picked up from there.

Whatever the truth of Aaron Brown's involvement, it is certainly more than was ascertained by the prior investigation. The extent of his role in the crime remains one of many unanswered questions.

7. Alfred Dewayne Brown (aka “Doby”)
(Plum Creek Apartments, 6969 South Loop East, #406, Houston, Texas)

Police summary of Interview April 4, 2003, Offense Report, pg. 2.099

Alfred Dewayne Brown told investigators that he was home the entire day of the crime (Thursday, 4/3/03) and that Ericka Dockery and her nephews (Reginald Jones and Rubin Jones) could verify that story. He agreed that he knew Dashan Glaspie and Elijah Joubert but said they were “not that tight.” He said the last time he saw them was on Tuesday night (4/1/03) after an argument with his girlfriend, and that he “hung out all day” Wednesday and Thursday. He says he did not leave the house until Friday.

He was angry to be accused of being involved in the crime, and said he was on his way to the police station to turn himself in when he was stopped and arrested. All he did on Thursday April 3 was talk to people on the phone. He talked to Glaspie on the phone about noon on Thursday. He probably talked to Joubert as well that day. Brown said that if the police put an ankle brace on him he believed he could locate the murder weapon for them, but otherwise could not help them. (It is unknown whether this was a proposal of the police or of Brown.)

Analysis

Even though Alfred Dewayne Brown is the centerpiece of this inquiry, he has only made one statement. In it he presented a simple alibi: He did not leave the house that morning. He differs with Ericka Dockery on which day they had an argument. (Ericka claims that they argued Wednesday April 2nd, the night before the crime. Brown said they argued on April 1st and that he hung out Wednesday and Thursday.) He mentioned talking on the phone with Glaspie “around noon.”

8. Richard Carraway

Police Summary Interview May 7, 2015, Re-Investigation Report, Supplement 11

Carraway said that Dashan Glaspie and Elijah Joubert asked him to participate in the robbery a few days before it happened. He said that they came to his place around 7:00 a.m. or 8:00 a.m. on the morning of the crime but he wasn't there. (It is unclear how he knew this). They wanted him to be the driver and look-out, which he had done before for them. He said he originally agreed to participate but then decided against it and avoided Glaspie and Joubert. He said that after the crime Glaspie came over with a girl named "Ericka." [Note: He may mean Tonika Hutchins, Glaspie's girlfriend]. Carraway said that Glaspie was complaining that they were stuck in traffic after the crime. Carraway said that Glaspie said he shot the woman and the cop with his .45 that had a laser beam. He thought Alfred Dewayne Brown was involved because of the news reports and said Brown was with them on other robberies. He said that he has never seen Brown be aggressive.

Analysis

Richard Carraway is one of the people who participated in criminal activities with Dashan Glaspie and Elijah Joubert around the time of the crime. He admitted to having foreknowledge of the crime, but says he chose not to participate. He heard Glaspie admit to murder.

**9. Laquinta Carter (aka “Late Night Hike”)
(5759 Overdale, Houston, Texas)**

**Grand Jury Testimony April 21, 2003, HC/BROWN-9374, (provided by
County Attorney)**

Carter stated that at the time of her interview she was 22 years old. She lives with her mother Linda Carter at 5759 Overdale. She said she is “God sisters” with Tonika Hutchins, and that Alfred Dewayne “Doby” Brown’s used to be her boyfriend. She has served time for theft. She said that Brown did not sell drugs, and that he got money from Ericka Dockery.

Dashan “Shon” Glaspie had a .45ACP (“Automatic Colt Pistol”) handgun that he always had on him. Elijah “Ghetto” Joubert also always had a gun on him, but had many different ones.

The day of the crime, April 3, 2003, Carter received a call from Sharhonda Simon telling her that someone saw Alfred Dewayne Brown driving Tonika Hutchins’ car. She called Brown around noon (at Ericka Dockery’s apartment) and asked him what happened. Brown told her he had been home sick all morning. Later, when she was visiting Brown in jail, he told her that he was in the furniture store that morning. She heard this story first from Tonika Hutchins, who heard it from Glaspie, but Carter said she also heard it from Brown. However, she added that Brown said he wasn’t at all involved in the crime and that it was Elijah “Ghetto” Joubert, Ernest “Deuce” Matthews and George “Ju-Ju” Powell. Brown also told her that Ernest “Deuce” Mathew’s car, which is a 2-door with missing hubcaps, was the car used at the ACE Check Cashing crime. [Note: Matthews also drove a white Grand Am]. She said it was all a set-up to steal money and marijuana from a Mexican man.

When Carter heard about the crime from her friend Brandy Chavis, she called Hutchins, and Hutchins asked her to recover her white Grand Am from the Villa Americana. Carter picked up her friend Martha Love and they drove to the VA. She met Hutchins and Glaspie there at around 10:00 a.m. They gave her the keys to the Grand Am, which she parked on Overdale. She talked with Brown all afternoon. He told her then that he had nothing to do with the crime, and that he was home all day.

Latest Statement to Investigators May 8, 2015, Audio Disc (provided by HPD)

Carter said she was with Brown the night before the robbery. The next day, April 3, 2003 she picked up Tonika Hutchins's white Grand Am at the VA. Later, she called Brown at Ericka Dockery's house. Brown told her that he was sick and had a headache. When she met with Brown in jail he told her he had nothing to do with the crime. He never made any admissions to her. Glaspie never told her that either he or Brown was there. She hasn't spoken to anyone else about the case. She said she didn't want anything to do with this case and didn't want to be involved.

Analysis

Laquinta [also frequently spelled "Laquetha" in the investigation] Carter was one of Alfred Dewayne Brown's former girlfriends at the time of the crime. She is "God sisters" with and was very close to Dashan Glaspie's girlfriend Tonika Hutchins. She came to the Villa Americana immediately after the crime to move Hutchins' white Pontiac Grand Am away from the VA. She told the Grand Jury that Brown told her during a prison visit that he was near the scene of the crime, in the furniture store next door, with Glaspie, Elijah Joubert, George Powell and Ernest Matthews, in order to rob a Mexican man. She admits that she heard this story from Tonika Hutchins but said that Brown told her also. She was originally slated to be a Joubert trial witness, but was involved in the same car accident which killed Tonika Hutchins on the way to Elijah Joubert's trial.

She most recently told investigators that Brown never told her he was in the furniture store, that she doesn't remember her statements to the Grand Jury, and does not want to be involved in the case.

10. Lamarcus Ray Colar

(Villa Americana Apartments, 5901 Selinsky Road #253, Houston, Texas)

Initial Statements 2:15 a.m. April 4, 2003, Drive 3 HC/BROWN-12093 Audio (provided by County Attorney)

Colar said that he came home from school on April 3 (he did not state the time), went to the bathroom, and came out to see Elijah “Ghetto” Joubert and Dashan “Shon” Glaspie in his kitchen. (Someone else in the apartment let them in). Glaspie was on his cell phone, saying: “Bitch got out of line I had to shoot her.” Glaspie owned a .45ACP handgun (the type that killed Alfredia Jones). Colar said: “There was a third dude, some little fat shit I don’t know his name Doby or some shit like that.” He said that the third man was a “little dude” who always hangs around Glaspie, and he thought he was about 19. He said that he didn’t know him. Colar heard that Glaspie gave George “Ju-Ju” Powell his gun.

The interrogators repeatedly threatened Colar and his sister Shekia “Nikki” Colar with prosecution during Colar’s interview. They told him they need him to tell them “a story” or else they would arrest his sister. Colar recalled that Joubert said “Hey man we have to leave,” and Glaspie responded “Okay I got everything set up lets go.” Colar said that the third man came to the door to make sure he didn’t leave anything, and Joubert came back later to get his clothing. Colar added: “I’m telling the honest truth of what you want me to tell you.”

Grand Jury April 28, 2003, HC/BROWN-09069 (provided by County Attorney)

Colar said he lived with his sister Shekia “Nikki” Colar at apartment #253 in the Villa Americana. His nephews, nieces, and younger sisters (Irene, Letroy, Detroy, Tikia, and Diamond) lived with them. He said that his mom was killed the previous year by her boyfriend Rodney Hunter, and that he will attend the trial of that case right after the Grand Jury in the same building. Colar said he knows Dashan “Shon” Glaspie, Elijah “Ghetto” Joubert, and Alfred Dewayne “Doby” Brown. They didn’t live at the VA, they just hung out there. They all sold crack cocaine.

Colar said he knew both George “Ju-Ju” Powell and Ernest “Deuce” Matthews from the VA. He knew what both looked like, and said they both sell crack. Matthews had a Grand Am that looked similar to Tonika’s, but it had “factory rims.” [It is unclear if he meant by this that it had no hubcaps]. Glaspie had an expensive-looking .45ACP handgun with a laser beam that he was very proud of.

Colar left from school at 10:00 a.m. on the day of the crime, April 3, 2003. He said he probably got home about 10:30 a.m. or 11:00 a.m., but didn't know the exact time. When he got home his nephews Letroy and Detroy were there, and his sister was upstairs asleep. After a few minutes he went to the restroom. When he came out, he saw Glaspie and Joubert in the kitchen talking, and Brown in the living room on the recliner watching TV. One of the nephews probably let them in. They had been over before. Joubert was close to Colar's sister Shekia.

Colar saw the white Grand Am in the parking lot outside his house. He said Glaspie and Joubert were jumpy. Glaspie was on the phone saying: "Bitch got out of line, I had to shoot her." Joubert came to Glaspie and said that they had to leave, so they left. Brown said nothing the whole time. They left a pile of clothing on the table. A few minutes later Joubert knocked on the door, saying he had left something, and retrieved the clothing from the table. Colar's sister didn't wake up until 3:30 p.m.

Colar said later that day George "Ju-Ju" Powell told him that he had hidden the clothing (used in the crime) and put Glaspie's gun in Rayfael "Noonie" Viverette's house. Colar heard around the neighborhood and from "Officer Ramsey" that Glaspie had shot the woman and Joubert had shot the police officer. Colar didn't know Brown very well. He thought he was young and didn't say much. Colar said he'd rather not have to testify because he has a baby on the way. If he had to choose he'd say Joubert planned the robbery.

Statements to Defendant's Team December 9, 2008 (provided by Brown's Counsel, Tab 14)

Colar admitted he originally told the police that he saw Alfred Dewayne Brown with Dashan Glaspie and Elijah Joubert, but he now realizes that he was mistaken about his identification of Brown. The man he saw was likely Jero "JD" Dorty. Colar said that it is easy to confuse the two because they look alike. The curtains were drawn and the house was dark. The only source of light was the television. The man he saw was about 20 feet away from him and his face was turned away. Colar's perception was also hampered because he had smoked a joint a few minutes before, and it was his third joint of the day. Colar stated that Brown's lawyers during the trial never attempted to contact him.

Interview with ADA Lin Hardaway December 7, 2012, HC/BROWN-40727 (Box 10) (provided by County Attorney)

Colar said that it is possible he mixed up Alfred Dewayne (“Doby”) Brown with Jero Dorty. When the police came to his house after the crime, they were not asking about Jero Dorty and they didn't have a photo of Jero Dorty. They had a photo of Brown and kept asking about Brown. Colar was high at the time. He was high the morning of the crime, and was high when he talked to the police. Colar reiterated that it could have been Jero Dorty he saw that day, because he and Brown have the same size and build and it was dark in the room. He went along with the police and said it was Brown because the police said that Brown was the third guy. He didn't know if the three men changed clothes there. He saw a pile of clothing on the table. He wasn't sure who picked up the clothing.

Police Summary of Interview May 12, 2015, Re-Investigation Report Supplement 18, (provided by County Attorney), Audio Disc (provided by HPD)

Colar stated that the day of the crime, April 3, 2003, he came home between 10:00 a.m. and 10:30 a.m. He went to use the restroom, and when he came out Elijah “Ghetto” Joubert and Dashan “Shon” Glaspie were in his kitchen. Glaspie was using his phone and saying: “This bitch was tripping, she got out of line and I did what I had to do.” Colar said Glaspie said this several times. There was a third male in the living room but Colar didn’t know who it was. It was dark and he didn't talk to him. Joubert and Glaspie left. Later, Brown knocked on the door saying that “Ghetto” (Elijah Joubert) had left his clothing. He picked up the clothing and left. Colar went to bed. When he woke, Danta “DJ” Fontenette was at his door saying there were police everywhere. Colar said he couldn’t say whether “JD” (Jero Dorty) was involved. When he was asked how Brown knew where the clothing was, Colar said “someone must have told him.”

Analysis

Lamarcus Colar at *one* point named “Doby” as being present with Elijah Joubert and Dashan Glaspie shortly after the crime. His statement helped solidify police belief that Brown should be the correct third suspect. However, he does not seem very sure about this identification. He later told ADA Inger Hampton that his initial interrogation was coerced.

Colar and his sister Shekia sold drugs out of their apartment. The initial interrogation audiotape confirms that during the interview the interrogators repeatedly asserted that they would arrest Colar's sister unless he told them "a story." They came looking for information on a man named "Doby" (the nickname provided by George "Ju-Ju" Powell) and left with a possibility of "Doby" in the proximity of the other suspects. Colar initially said "some little fat shit I don't know his name Doby or some shit like that" was over in the corner not speaking. Brown is 6'2" and is an unlikely candidate for the "little dude" Colar described as the third man, a man he admitted he did not know. Despite these inconsistencies, after meeting with Colar law enforcement focused their attention on Alfred Dewayne Brown. In his later statement, Colar recanted any such identification of the third man, and suggested it may have been Jero Dorthy.

11. Jesse Coleman (aka “Smooth”)

Police Summary of Interview April 22, 2003, Offense Report, pg. 2.251

On the morning of the crime, April 3, 2003, Coleman was asleep at his girlfriend's house. He woke up later in the morning. His girlfriend told him that someone had been trying to call him on his mobile phone. Later in the day he went to his mother's house and called Dashan Glaspie. He denied having any knowledge of the case investigation.

Video Interview with ADA Lynn Hardaway and Don Cohen August 31, 2012, HC/BROWN-40338 (Box 10) (provided by County Attorney)

Coleman categorically denied writing a letter to Alfred Dewayne Brown in prison stating that Brown had been set up and that the actual third person in the crime was Jero “JD” Dorty.

Analysis

Jesse Coleman was described by Kishone Jefferson to be an associate of Aaron “AB” Brown, and described by Alisha Hubbard to have been in the Villa Americana parking lot on the day of the crime. He exchanged phone calls with Dashan Glaspie during the afternoon on the day of the crime. He is of special interest because of a letter that Alfred Dewayne Brown’s defense team found in Brown’s possession, purportedly from Coleman, which stated that Jero Dorty was the real third culprit in the crime. Brown’s legal team used this as a foundation to argue that Brown was mistaken for Dorty by several of the witnesses involved, and that Glaspie and Elijah Joubert were covering for him. However, Coleman strongly denied writing the letter, and has since passed away.

12. Ericka Dockery/Lockette

(Plum Creek Apartments, 6969 South Loop East #406, Houston, Texas)

Police Summary of Interview (Witness Statement) April 4, 2003, Offense Report, pg. 2.128

Ericka woke up at 6:00 a.m., went downstairs, and saw Alfred Dewayne Brown asleep on her couch. She took her kids to the bus stop at 6:45 a.m., then came back and got ready for work. She left at 8:30 a.m. and arrived at work at 8:55 a.m. After work, she came home at 1:30 p.m. and saw Brown upstairs vomiting. He said he was sick and they napped awhile.

Grand Jury Testimony April 21, 2003, HC/BROWN-08665 (provided by County Attorney)

Initially, Dockery repeated the same story she told in her original statement. She walked her kids to the bus stop at 6:40-6:50 a.m. When she returned, Alfred Dewayne Brown was still asleep on her couch. He was there until she left for work at 8:30 a.m. Around 9:30 a.m., she called home from work and talked to Reginald Jones who told her Brown was upstairs. [Note: There is no phone record evidence of this call.] A little after 10:00 a.m. she received a call from her house, with Brown on the line, and Brown told her to turn on the news. Under severe examination by the members of the Grand Jury and ADA Dan Rizzo, she started to re-arrange details of her story, admitting that she may have left the house as early as 7:30 a.m. for work, or even earlier, saying that she wanted to “fool around” with an ex-boyfriend of hers, who she didn’t end up meeting, and instead went to IHOP for an hour. The Grand Jury was incredulous and unrelenting. They caught her denying making a phone call to Elijah Joubert’s cell phone at 10:26 a.m. the day of the crime from Alma Berry’s house, and threatened to charge her with aggravated perjury. [Note: This is the reason she spent 7 weeks in jail].

Letter to Judge Mark Ellis October 9, 2003, HC/BROWN-31654 (provided by County Attorney)

[Note: This letter was written after 7 weeks in jail after being charged with perjury, with bail set beyond her ability to pay]. Dockery said that at the time of the crime she did not know that Alfred Dewayne Brown was not in her house. Later he asked her to tell the Grand Jury that he was there. She said that Aaron “AB” Brown

said he would kill her if she said anything different. She said that “AB” Brown has knowledge of the disposal of the weapon and clothing used in the crime. Dockery stated repeatedly that she loves her children and will do anything necessary to protect them and return to them.

Statement to Police December 18, 2003, Offense Report, pg. 2.302

Dockery recalled an incident she had with “Shondo” [Patricia Williams, who denies that nickname] in jail. She overheard “Shondo” saying that “her homeboys” who were, according to Dockery, “Shon, Ghetto and Doby” killed those people. “Shondo” said they came to her apartment the day of the robbery, laughed and told her what happened. “Shondo” said she had the bloody clothing, and said she wouldn't snitch because they were her boys. [Note: Williams consistently reported to the police that Glaspie and Joubert, but not Brown, came to her apartment that morning.]

Dockery recalled the phone call she received at Alma Berry's house, and she heard Alfred Dewayne Brown say he was at “Shondo's house.” Ericka said she called Elijah Joubert to come and get Brown from her house because that's where (at the time) she believed he was. She said she put together where he really was after she met “Shondo” in jail. [Note: This statement, nine months after her initial statement, is her first mention of Brown saying he was at “Shondo's” house. It appears triggered by recently overhearing Williams in jail saying her “homeboys” came to her apartment that morning. When asked about this on 12/9/08, Williams said she was referring to Glaspie and Joubert].

Statement to Police January 6, 2004, Offense Report, pg. 2.304

Dockery woke up 5:00 a.m., woke her kids, went downstairs, and saw Alfred Dewayne Brown asleep on the couch. She drove her kids to school because she was running late. She got home at 7:25 a.m. to grab her timesheets for work and Brown was not there. She drove straight to work and got there at 8:30 a.m. Around 10:00 a.m. her employer Alma Berry's phone rang and Berry said "it's your house." Dockery picked up the phone and asked Brown where he was and he said at “Shondo's house.” He said “Shondo” is a girl Elijah “Ghetto” Joubert messes with.

Brown told her over the phone to turn on the news. Dockery asked Brown if he did the crime and he said "that ain't none of me dog." They hung up and then she

called Joubert to tell him to bring Brown to her house to gather his things. She left work at 1:00 p.m. and when she got home she saw Brown inside on her stairs. He said he was sick and had been throwing up. They fell asleep for a while.

Dockery said that she was mistaken about times in her original statement, specifically that she didn't leave her house until 8:30 a.m. She stated that times in this (current) statement are accurate.

Statement to Police January 6, 2004, Offense Report, pg. 2.307

Dockery gave a second statement on January 6, 2004. In this statement she described events after Alfred Dewayne Brown's arrest. She visited him many times in jail and asked him about his involvement. He denied any involvement. Later she told him that she had to go to the Grand Jury and was going to tell the truth that he was not at the apartment on the day of the crime. Brown yelled at her and told her to tell them you left at 8:30 a.m. and that he was still asleep on the couch. She told him she wouldn't. He told her forcefully to do it. She then received an anonymous phone call which threatened her and told her to do as she was told. She then went to the Grand Jury and lied because she was scared for her kids.

A month later Dockery was with Aaron "AB" Brown, his girlfriend Kishone Jefferson, and Jesse "Smooth" Coleman. Jefferson got into an argument with Coleman. Jefferson told Coleman that she was going to tell the police that Coleman was involved. Aaron Brown told her to shut up, and he told her that's why he doesn't tell her anything. Later, Dockery was with Aaron Brown and he told her that the night before the robbery Elijah "Ghetto" Joubert stayed at his house and Kishone Jefferson was there also. He told her he woke up that morning and went outside and saw Joubert getting in a car with Dashan "Shon" Glaspie, Tonika Hutchins and Alfred Dewayne Brown. Alfred Dewayne Brown was sitting in the front seat as a passenger. AB said he was supposed to go to the robbery but didn't because he had a bad feeling about it. He told Dockery that later Alfred Dewayne Brown knocked on his door and handed him clothing and a gun. He told her that a man named Wilbert "Cowboy Will" Green had picked Alfred Dewayne Brown up at the VA and taken him to his (Aaron Brown's) house. Aaron Brown said he burned the clothes and threw the gun into the bayou at MLK and Airport. AB said that George "Ju-Ju" Powell gave the police the clothing and guns he got from "Ghetto" and "Shon" but they were not going to get the clothing and gun that belonged to Dewayne.

The next day, Dockery visited Alfred Dewayne Brown and asked to know the truth and he said "I was there, I was there." After that, she no longer visited him. Later she saw Kishone Jefferson with bruises. She said that Aaron "AB" Brown had beaten her up because he was upset that Alfred Dewayne Brown was going to get the death penalty because he shot the cop. Kishone Jefferson also said that AB told her Dewayne admitted to AB that he shot the cop. While Dockery and Jefferson were talking, Aaron Brown showed up, hit Jefferson again, and threatened to shoot Dockery.

Trial Testimony (Brown) October 13, 2005, Vol. 31, pg. 14

Dockery testified that she was 30 years old and married to Julius Lockett with three children. She was charged with three counts of aggravated perjury for lying to the Grand Jury. She lied to protect Alfred Dewayne "Doby" Brown, who she was dating at the time of the crime, and who lived with her then in the Plum Creek Apartments off the South Loop. She also knew Dashan "Shon" Glaspie and Elijah "Ghetto" Joubert through Brown. She lied to the Grand Jury when she said that Brown was at home. Her bail was \$5,000 for each one of the three counts of perjury. She was in jail for 7 weeks. After that, she made a deal so that she could go home. She said she will get probation *if* she testifies "truthfully." She was under house arrest at the time of the trial and wore an ankle bracelet. She showed the court her ankle bracelet. She had to do a drug test twice a month and call HPD once a week.

Dockery worked two jobs at the time of the incident, one job in patient care and one at a Subway. At the end of her shift at Subway on the evening before the crime, Wednesday, April 2, 2003, at about 10:00 p.m., Brown picked her up with her car. At about 11:00 p.m. he told her he was going to the VA to hang out with Dashan Glaspie and Elijah Joubert. She got in an argument with Brown because she didn't like him hanging out with them. At about 11:30 p.m. she called Aaron "AB" Brown, wondering where Alfred Dewayne Brown was so he could get his stuff out of her house. About 20 minutes later Alfred Dewayne Brown showed up at her house. Aaron Brown had dropped him off. The argument continued. Dockery said they were over and went to bed.

The next day, the day of the crime, Dockery woke up between 5:00 a.m. and 6:00 a.m. She got her kids ready for school. They have to be there by 8:00 a.m. for classes. For free breakfast, they need to get to school by 7:15 a.m. She was running late and had to drive them to school. She heard the phone ring as she was leaving, but didn't answer it.

Before 7:15 a.m., as she came downstairs to take her kids to school, she saw Brown on the couch. Her cousin Terrence Jones was laying on the other couch and her cousin Ruben Jones was playing video games. [Note: Reginald Jones said Terrance was not there]. She took her kids to school, then came back less than 10 minutes later to get her time sheets. Brown was not there. She got to work between 8:00 a.m. and 9:00 a.m.

At about 10:00 a.m., “The Price is Right” was on TV, and her employer Alma Berry's phone rang. Brown was on the line and they started arguing. He said he was at “Shondo's house” at the VA. He told her to put on Channel 26. She put it on and it was news about the killings. She asked him if he did that, and he said no. She had been in that store “maybe once” and cashed a check. She called Joubert to tell him to get Brown out of her house, but he didn't answer. At about 1:30 p.m. she went home and saw Brown standing on the stairs. They went upstairs and he said he felt sick. He was crying and moaning. She remembered he had an upset stomach. They lay down and took a nap. She woke about 3:30 p.m. and went to work.

The next day, Friday April 4, in the afternoon, she got phone calls from Alfred Dewayne Brown’s “baby momma” Sharhonda Simon, Brown's sister Constance, and his brother Aaron “AB” Brown. She went to work at her second job. While she was there, Brown was arrested. She saw him in jail almost every day until mid-July. When he found out that she was going to testify before the Grand Jury he told her to say he was home at 8:30 a.m. He yelled at her to tell them he was home. She lied to the Grand Jury. She got threatening phone calls telling her not to snitch, one call before her Grand Jury testimony and several after. On the last day she visited Brown in jail, she asked him if he did it, to tell her the truth. He told her that he was there.

On cross-examination, Dockery agreed that Ms. Berry’s telephone caller ID showed the 10:08 a.m. call came from Dockery’s house. She also agreed that Ms. Berry answered the phone and said “It’s your house” before handing the phone to Dockery.

Statement to Brown Defense Team (provided by Brown’s counsel, Tab 8)

When Dockery received the phone call at Alma Berry's house, she specifically remembers seeing her own apartment's caller ID. She was never threatened by Alfred Dewayne Brown about her testimony. Brown never told her that he was at

the crime. She was threatened by Dan Rizzo during the Grand Jury until she changed her testimony.

Interview with ADA Inger Hampton, ADA Lynn Hardaway, Don Cohen and Brown attorney Brian Stolarz December 8, 2011, HC/BROWN-08263 (provided by County Attorney)

Dockery was pressured by the State to change her story, and only did so because the prosecution told her they were going to take away her children. She did not talk to the defense much after that because she was upset about everything that happened. She said that she can't let someone die for something they didn't do.

The night before the crime she was in a heated argument with Brown because he wanted to hang out with Dashan Glaspie and Elijah Joubert. In the morning she woke up and came downstairs. She wasn't really sure about the time and never should have said a time because she was never sure. She saw Brown on the couch, asked why he was still there, and he rolled over and went back to sleep. When she left he was there. The kids had to be at school by either 7:00 a.m. or 7:45 a.m. She either took them or they caught the bus. She picked up breakfast for Mrs. Alma Berry and made it to work on time. She was pretty sure she worked from 8:00 a.m. until 2:00 p.m.

At work she received a phone call. Both she and Mrs. Berry saw that the caller ID was coming from her house. Brown was on the phone and they argued, he told her to put on the news and she did, and then they argued more and then hung up. When she got home around 1:30 p.m. or 2:00 p.m., he was standing on the stairs feeling sick, and they kept arguing. She fell asleep and woke up the next day. Her house began to get a lot of phone calls, and Brown told her that he'd been implicated in the crime and that the police thought he did it. She told him to go to the police and explain himself. She went to work and got a call from home that the police were searching her house.

She went home and gave them consent to do what they were already doing, and then went to the police station to give her statement. She "got into it" with the officers and cussed them out. The next week the police came to arrest her at her house for seven year-old traffic tickets. She sat in jail a few days and was repeatedly interrogated by investigators while she maintained she never saw Brown leave the house.

She met Alfred Dewayne Brown through Kishone Jefferson, Aaron "AB" Brown's girlfriend. Aaron Brown and Jefferson had a very abusive relationship. He beat her. Dockery said she personally was on a lot of drugs back then, and that she was high during her Grand Jury testimony. She said that during the Grand Jury testimony, whenever they would take a break, ADA Dan Rizzo would take her to another room and threaten her and her children. She recalled being with "Shondo" [Patricia Williams, who denies the nickname] in jail. She recalled saying that she overheard Williams mention "Ghetto, Shon, and Doby" [Joubert, Glaspie, and Dewayne Brown] [Note: Williams said on 12/9/2008 she was referring only to Glaspie and Joubert]. However, the two of them never had a conversation. She reiterated that she did not come back home that morning after her children went to school.

Latest Statement to Investigators May 5, 2015, Audio Disc (provided by HPD)

Dockery said she still does not know whether or not Brown was involved in the crime. She said she hates the situation the case put her in and wants her life back. She initially told the truth to the Grand Jury, but ADA Rizzo pressured her to change her statements. The night before the crime, April 2, 2003, she got in an argument with Alfred Dewayne Brown. She took a few drugs to help fall asleep. The morning of the crime, April 3, 2003, she got up early in the morning to get the kids to school, and saw Brown on the couch. She said she could not remember what the time it was, maybe 6:00 a.m., maybe 7:00 a.m., she did not know. She said after she dropped her kids off she went back home because she forgot her time sheet, and did not see Brown.

She went to Burger King to pick up breakfast for Alma Berry and got to work on time around 8:00 a.m.

At work she got a phone call, and saw the caller ID on the phone as her apartment. Brown was on the phone and they argued. He told her he was at home, and asked her if she saw the news. They argued more and he hung up. She got home from work about 1:30 p.m. and saw Brown coming down the stairs.

A lot of phone calls started coming in telling her that Brown was involved in the crime. Aaron "AB" Brown told her a lot of things she didn't believe, such as that Alfred Dewayne Brown was in the car with Glaspie and Joubert outside his house that morning. Aaron Brown said that he was supposed to be part of the robbery but

he had a bad feeling about it and didn't go. He also said that he disposed of clothing and a gun involved in the crime. Aaron Brown threatened her not to talk.

Dockery said she never asked Reginald or Ruben Jones whether they had helped Brown make a three-way call. She said she testified the way she did during the trial in order to get back to her kids, because her mom was on drugs and she knew her kids would go into the system.

She barely remembered the statement she signed with Brown's team four years earlier. She said Brown never told her he was “there” before the trial (thus, her trial testimony is false). She claims now that after the trial he told her he was there. Alfred Dewayne Brown never threatened her, but she thought that Brown was involved.

Analysis

Ericka Dockery was perhaps the most important witness at Alfred Dewayne Brown's trial after Dashan Glaspie and Sheikah Mohammed Afzal. She gave testimony that he was gone from her house at a time which matched Glaspie's testimony, that he had knowledge of the crime, that he had called her from the Villa Americana immediately after the crime, and most damningly, that he had told her that he was “there” during the crime. None of this testimony can be found in her original statement or in the story she told to the Grand Jury. Her journey from one testimony to another is a story of intimidation and manipulation, and is part of the controversy which eventually saw Alfred Dewayne Brown released from prison. She was threatened and pressured by the Grand Jury, then jailed for 7 weeks until the testimony coerced by the prosecution was obtained. During the trial she was persistently reminded by prosecutor Dan Rizzo of her situation, the conditions under which she was out of prison on probation, the terms of her house arrest, and the monitor bracelet she was forced to wear on her ankle. Before beginning her direct examination, he reminded her, clearly and directly, of the control the State held over her life. The truth regarding her testimony may never be known, since she has now given multiple internally inconsistent conflicting accounts of the day of the crime and subsequent events. What is clear, however, is that her testimony is unusable in any current attempt to prosecute Alfred Dewayne Brown, since she has repeatedly gone back-and-forth on nearly every aspect of the story she told.

13. Jero Dorthy (aka “JD”)
(11703 Mill Valley, Houston, Texas)

Interview with Dan Rizzo May 3, 2003, Audio (provided by Brown’s counsel)

Dorthy and ADA Rizzo discussed the terms of a plea bargain deal that Dorthy agreed to, which included wearing a wire and seeking the weapon used in the ACE robbery. The wire would be used to record Laturischeva “Pebbles” Jenkins (Holmes), who they believed has a role in the crime. If Dorthy was unable to find the weapon, the deal would not be satisfied. Dorthy provided information that Aaron “AB” Brown had hidden the weapon.

Interview with Don Cohen and Lin Hardaway February 22, 2012, Audio (provided by Brown’s Counsel)

Dorthy lived with his mother at the time of the incident. He hung out with Aaron “AB” Brown, Dashan “Shon” Glaspie, Alfred “JR” Woods, Elijah “Ghetto” Joubert, and Alfred Dewayne “Doby” Brown (every now and then). He believed that Alfred Dewayne Brown was “messing with” a “chubby dark girl” who was friends with Martha (last name not given). Another girl they all “messed with” was Laturischeva “Pebbles” Holmes. He said that Joubert, Glaspie, and Alfred Dewayne Brown were a team doing robberies.

Interview April 30, 2015, Re-Investigation Report, Supplement 7

Dorthy said he was not at the ACE Check Cashing Store, but did not remember where he was at the time. He thought he may have been at spring practice for football for TSU. He said he “only” sold dope, and that Dashan Glaspie, Ladon Williams, Elijah Joubert, and Alfred Dewayne Brown were jackers (robbers). He said that Joubert told him that Glaspie had shot the woman and that Brown had shot the police officer.

Analysis

Jero Dorthy is believed by Alfred Dewayne Brown’s legal team to possibly have been the third party in the ACE Check Cashing robbery and murder. The foundation for this belief is a letter in Brown’s possession allegedly written by Jesse

“Smooth” Coleman which states that Brown was set up and that Dorty is the real culprit. The letter contains insider details of the crime. Coleman strongly denied writing it before he passed away. Alisha Hubbard, and even Joubert, eventually named Dorty as the third party in the crime. Dorty was an integral member of the criminal group, and was close with both Glaspie and Aaron “AB” Brown. He has a criminal record of assault.

14. Leo Foisner

Police Summary of Initial Statement April 4, 2003, Offense Report, pg. 2.165

Foisner arrived for work with his wife Margaret, in separate vehicles, on the day of the crime. They arrived sometime between 7:30 a.m. and 7:32 a.m. A man Foisner had known for years [Vanan Saukam] arrived on his bicycle before Foisner unlocked the front door. Suddenly Foisner saw a black man wearing a dark jacket walk toward him from the northern strip center. The man had his hands deep in his pockets. Foisner was an Army veteran and had been in firefights before. He sensed that the man was up to no good and told Saukam so. Saukam turned to look, and then another black man appeared walking about two car lengths behind the first. He was also wearing a dark jacket with hands deep in his pockets. Foisner let the men see him pull out and cock the chrome .380ACP pistol he carries in his waistband. The lead suspect veered off and went south through the parking lot and the other man followed. The suspects stopped at the edge of the parking lot for a few minutes, and then walked away toward the north. Leo checked on the store and his wife, then opened the store. A timestamp on his door reveals it to have been opened at **7:36 a.m.**

Live Police Line-Up April 5, 2003, Offense Report, pg. 2.188

Foisner stated that Alfred Dewayne Brown looked “familiar,” and did not recognize Elijah Joubert and did not recognize Dashan Glaspie. Ernest “Deuce” Matthews was not in the line-up.

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 23

Foisner said he was 69 years old, and had been married 50 years. He was an active duty Sergeant Major in the National Guard. He was in the Airborne as a jump master and weapons instructor. He was licensed to carry a weapon in the State of Texas, and was carrying on the day of the crime, April 3, 2003. He owns the check cashing store on Telephone and Alameda-Genoa. He arrived at his store about 7:30 a.m. in the morning on the day of the crime. He pulled up in his pickup with his wife following in another car. A regular customer of his, Vanan Saukam, pulled up on a bicycle and they began a conversation outside the store before he opened up. He noticed a young black male walking towards them from the direction of the donut shop. The man was wearing a jacket with his hands deep in his pockets. Then he saw another man walking about 20 to 30 feet behind the first, dressed the same and

following the first. He told Saukam that he thought there might be trouble and pulled out his pistol, cocked it and flashed it. He made sure they saw it. The men changed direction and walked off the sidewalk, gathered there for a minute, and then went back toward where they came from. Foisner opened his store. He talked to his wife about the incident, then left to open other stores.

Analysis

Leo Foisner is important for connecting the identification (by other witnesses) of Dashan Glaspie and Elijah Joubert at the gas station on Telephone Road to the commission of later criminal activity. He saw two men walk from the direction of the gas station, toward his store, with the seeming intent of robbing him.

In his initial statement Foisner said that he knew he opened his store at exactly **7:36 a.m.** because his store had an electronic time stamp. During his direct examination during Brown's trial, ADA Rizzo asked: "After you opened up the store around 8:00 a.m., what did you do next?" Foisner answered: "After I opened the store, I went to the store on South Richie and opened it." Trial Transcript (Brown), October 11, 2005, Vol. 29, pg. 37. The plainly objectionable question (leading, assuming a fact not in evidence) did not draw an objection. There was no cross-examination about the 7:36 a.m. time stamp. This time difference gives Glaspie's timeline more wiggle room to work, because it would have been extremely difficult for Glaspie to pick up Alfred Dewayne Brown, then Joubert, then pick up a jacket at Brown's brother's place, then drive to the gas station, all between 6:48 a.m. and 7:36 a.m.

15. Danta (Donte) Fontenette (aka “DJ”)

Police Summary of Interview April 5, 2003, Offense Report, pg. 2.208

Danta Fontenette led police to the apartment of Shekia “Nikki” Colar (#153), where he hid a Colt .45 in the kitchen cabinet without the knowledge of Shekia Colar. Shekia Colar let the police in and signed a voluntary consent form. They found the Colt .45 in a cigar box in the cabinet and submitted it for testing. It was found to have been stolen, but did not match the .45 used in the crime. Fontenette said that he had stored two guns in Mary Lee Hall’s house, but she threw them in the dumpster. Fontenette was only able to find the Colt .45 in the dumpster. He was unable to find the other gun. He says the other gun was a Glock 9mm, not a .380. He knew the police were looking for a .380, but he didn’t know where it was. Police checked the dumpster, but it had already been emptied.

Police Summary of Interview April 29, 2015, Re-Investigation Report, Supplement 20

Fontenette didn’t remember the day of the crime. He remembered that the police talked to him in Shekia Colar’s apartment. Fontenette’s brother Ernest “Deuce” Matthews” brought him to Colar’s apartment to find the guns Fontenette had hidden. Earlier, he took them to Marry Lee “Momma” Hall’s place in a swisher cigar box, but she threw them in the trash. The guns were a Glock .40S&W and a .45ACP.

Analysis

Danta “DJ” Fontenette is centrally located in the narrative, but solves very little for investigators and is somewhat of a loose thread. He is the brother of Ernest “Deuce” Matthews, who was one of the original suspects in the investigation (Matthews was seen by two witnesses with Glaspie and Joubert shortly before the crime). Fontenette was staying at the apartment of Shekia and Lamarcus Colar at the time, where Glaspie and Joubert gathered both the night before and also immediately before and after the crime. According to George “Ju-Ju” Powell, Fontenette took clothing from Dashan Glaspie after he returned from the crime scene. He admitted to have hidden two guns on the day of the crime, only one of which was recovered. The other gun may have been the weapon used at the crime scene, although this is now virtually impossible to know.

16. Dashan (sometimes spelled “Dashon,” “Deshon,” or “Deshan”) Vadell Glaspie (aka “Shon” and “P-Real”)

Summary of Preliminary Non-Recorded Interview April 4, 2003 8:15 a.m., HC/BROWN-06499 (provided by County Attorney)

Glaspie was confronted by police “with the fact that he was seen at the apartments with Ghetto and Doby.” Glaspie didn’t volunteer the name “Doby” – he was provided the name by the investigator. [Note: He was told repeatedly that there were three people involved, and was given the names of two other people. Eventually, those are the two people that he named.]

Police Summary of Initial Interview April 4, 2003, Offense Report, pg. 2.092

Glaspie initially denied being involved at all, then slowly started acknowledging his role in the crime. He told various stories, then agreed with investigators that he was seen at the gas station with Elijah Joubert and Alfred Dewayne Brown. Eventually Glaspie agreed to a version of events similar to his testimony at Brown’s trial.

The police told him that they know that he killed Alfredia Jones, since it was his gun and the bullet’s angle of entry was too high for Joubert to have done it. He responded that he thinks that Joubert’s gun “went off” and killed Alfredia Jones, but can’t say he saw it.

Statement for Plea Agreement July 15, 2004, Offense Report, pg. 2.326

Glaspie stated that at about 1:00 a.m. the night before the crime, he was on the phone with Alfred Dewayne “Doby” Brown asking him to come with him and Elijah “Ghetto” Joubert to check out a place to rob. At 2:00 a.m. on the day of the crime he was at the Villa Americana in Lamarcus Colar's apartment shooting dice. Joubert and Brown were not there. Around 2:00 a.m. or 2:30 a.m. his girlfriend Tonika Hutchins met him there. She was driving his 1993 Chevy Lumina. He and Tonika went to a motel on Telephone Road and were there from about 4:00 a.m. until 6:00 a.m. Then they went to her dad's house. She took a shower and he took a quick nap. They were there about an hour or so.

At 6:40 a.m. he called to try to wake up Alfred Dewayne Brown. Glaspie said that one of the “little dudes” that lived there answered the phone and said Brown was asleep. He called Joubert, then went to Brown's girlfriend's place in Tonika's car, a white 1995 Pontiac Grand Am. When he got there an older woman that he believed was Ericka Dockery's mother answered the door. She woke Brown, and Brown came out. Glaspie drove with Brown to the VA. They pulled in front of Lamarcus Colar's apartment and parked. Joubert was in the parking lot.

They had previously agreed to meet to look at a place to rob. Glaspie didn't see anyone else in the parking lot. They drove to Aaron “AB” Brown's house so that Alfred Dewayne Brown could grab a jacket. Brown got out and knocked on the window to wake up his brother. They were all wearing dark, long sleeved clothing and ball caps. Brown's jacket had two white stripes down the side.

They drove to a gas station and got \$5 dollars of gas. Next to the gas station was a donut store and a check cashing place. While Glaspie gassed up, Brown and Joubert walked to the check cashing place. He saw a woman pull up, but not get out of her car. Then a white man drove up and got out of his truck. Then a guy on a bicycle pulled up to the white man and began to talk to him. Brown and Joubert walked back from the store and told him that the “white dude” had pulled a gun on them and had “let his gun be seen.”

They drove back to the VA. When they got out of the car Glaspie saw Amos Bass and George “Ju-Ju” Powell. He did not see a female there. Brown used Glaspie's cell phone to make a call, then went to Sharhonda Simon's apartment. About 20-30 minutes later Glaspie and Joubert went to Simon's place to see what Brown was doing. He came out and they talked. Brown had an idea to rob another check cashing place that he knew about because his girlfriend Ericka Dockery cashed her checks there. Brown directed them where to go because Glaspie didn't know where it was.

When they pulled into the (ACE) parking lot, a man walked out of the furniture store (next door) and lit a cigarette. They parked in front of the furniture store. Joubert grabbed Glaspie's gun from under the seat, and stayed in the car while Glaspie and Brown walked into the furniture store. Glaspie talked to the furniture store employee (Afzal) while Brown wandered around the store and walked out. Glaspie talked to Afzal a little while longer, then followed. He walked to the car, grabbed his hat, then walked the ACE Check Cashing Store.

Brown held the security door open and Glaspie walked into the back area, where he saw a woman (Alfredia Jones) trying to open the safe with Joubert holding a gun to her. Brown went back out to the counter and started going through the woman's purse. The phone rang and Joubert let her answer it, but told her not to try anything. The woman said only yes's and no's on the phone, then went back to trying to open the safe. Brown came back to the security door. Then they heard the police radio coming from the lobby.

Glaspie looked out the front window, saw a uniformed officer, and ducked down. Joubert grabbed the clerk and dragged her to the security door behind Brown. Brown went into the lobby and Glaspie heard three shots. First one and then two more. In the lobby Joubert said "P, this bitch played us." Jones pleaded for her life but Joubert executed her. They ran out of the store over Officer Clark's body and saw that Brown was already in the car. Glaspie was the last one out of the store.

They drove away, and got stuck in traffic on the feeder for a minute or so. They took a right turn through the neighborhoods. They went on the back streets to get to MLK Avenue, and then drove to the VA. They parked in front of Lamarcus Colar's apartment, and all jumped out of the car. Joubert left Glaspie's gun on the seat. Brown grabbed his .380ACP pistol and put it in his waistband. Glaspie gave his gun to Powell and told him to hide it.

Glaspie, Brown and Joubert changed clothes in Colar's apartment. On the porch, Brown used Glaspie's phone. Joubert went upstairs to a woman's apartment. Glaspie doesn't know her name, but said she smokes embalming fluid. A few minutes later Glaspie and Brown went upstairs to the apartment. Joubert was watching the news about the robbery. They hung out there and smoked weed about 30 minutes to an hour, then went their separate ways. Brown left first, but Glaspie isn't sure how. Then Tonika Hutchins came by and picked up Glaspie. Tonika called Laquinta Carter from the parking lot and told her to come pick up Tonika's Grand Am.

Joubert was still in the parking lot at the VA when they left. Glaspie and Tonika drove to a motel. He didn't tell her anything about the crime, though she was suspicious. No one else was involved in the crime except Brown, Glaspie, and Joubert. They didn't have anyone on the inside and they didn't get any money.

Trial Testimony (Joubert) October 7, 2004, Vol. 29, pg. 156

At Joubert's trial, Glaspie told a story which was nearly word for word his later testimony at Alfred Dewayne Brown's trial. On cross-examination, he admitted that when Officer Charles Clark said over the radio "they have guns," the only person he could have seen was Glaspie. On closing, the defense argued that Glaspie shot Alfredia Jones. Joubert was convicted of Jones's murder.

Trial Testimony (Brown) October 13, 2005, Vol. 31, pg. 119

Glaspie stated that he was 23 years old. He confirms that his .45ACP pistol was used in the crime. He had known Elijah "Ghetto" Joubert and Alfred Dewayne "Doby" Brown since elementary school. On April 2, 2003, the day before the killings, he had a conversation with Joubert at the Villa Americana apartments about robbing the check cashing place on Telephone Road. Joubert agreed to come check the place out. In the VA that night, he had a conversation with Brown where he asked him to come along and watch the door, and Brown agreed.

Between 4:00 a.m. and 6:00 a.m. that morning Glaspie was with Tonika Hutchins at a motel room. Hutchins' Pontiac Grand Am was used in the crime. At about 6:00 a.m. he and Tonika Hutchins left to go to Tonika's father's house. Once there, Tonika took a shower, and Glaspie lay on the bed and made a series of phone calls. First he called Joubert, who was at the VA. Then he called Brown at Dockery's house. A young man answered the phone. He called again and then talked to Brown. Then he drove to Dockery's apartment, taking the .45ACP handgun with him. He picked up Brown and they drove to the VA. At that time the sun was coming up. They parked at the VA in front of Lamarcus Colar's apartment, a place they used for gambling. Joubert was standing outside, and got in the back seat.

They drove to the Crystal Springs Apartment so that Brown could get a jacket from his brother. They went to the first check cashing place and pulled into the gas station next door. Brown and Joubert walked toward the store and Glaspie stayed in the gas station lot. He saw an older "white dude" pull up in one car, and older woman in another, and then a man on a bicycle pulled up. Joubert and Brown made a U-turn and came back to where Glaspie was, telling Glaspie that the older man had let his gun be seen. They went back to the VA and saw Amos (Bass) and "Ju-Ju" (George Powell) in the parking lot. They all had a conversation together, then Glaspie let Brown use his cell phone. Glaspie did not use his phone to talk to Ericka Dockery, AB, or Sharhonda Simon.

Brown went to Sharhonda Simon's place. After 20 minutes, Joubert and Glaspie went to Simon's place to get Brown. When they got there, Brown mentioned that he knew of another check cashing place, where Ericka Dockery cashed her checks. He said it was off of 610. Glaspie didn't know where it was, so he drove while Brown gave directions. He said he had never been to that location before. [Note: Records indicate that Glaspie himself had used the ACE store before, see Offense Report, page 2.151]. They drove there to rob it, and from then on made no more cell phone calls.

They pulled up to the parking lot of the check cashing place, and saw a man smoking a cigarette in front of the furniture store, so they pulled in front of that. Joubert asked where Glaspie's .45ACP handgun was, and grabbed it from under the seat. Glaspie and Brown went inside of the furniture store, while Joubert stayed in the car. Joubert told them he was going to walk the woman inside the store when she showed up.

While Glaspie and Brown were in the furniture store, Glaspie talked to an employee (Afzal) about bedroom furniture. They talked more than 15 minutes. Brown walked around looking at merchandise. Then Brown went to the front window, gave Glaspie a look, and walked out. Glaspie followed and then went to the car and put on a jacket and a hat, and walked into the ACE.

When Glaspie entered ACE he saw Brown by the second mantrap door. Farther inside he saw Joubert by the safe with the woman who worked there (Jones). Joubert had the .45ACP handgun pointed at her. The woman looked scared. Brown went to the front counter and went through her purse. The company phone rang, Jones answered it, and she just said "yes" and "no" answers. Glaspie went to the bathroom area to look for cameras. Then he and Brown went back inside the interior area.

Glaspie heard a police radio in the lobby, and saw a uniformed police officer. Glaspie did not have a gun at this point, because Joubert had Glaspie's gun. Glaspie couldn't see if Brown had a gun. Joubert grabbed Jones and moved her toward the mantrap door. Brown went out the mantrap door into the lobby. Joubert followed him. Glaspie heard a few shots, and then followed Joubert into the lobby. Joubert held the woman by the dress and said "P this bitch plays us." She pleaded for her life, but Joubert executed her. Glaspie didn't see Joubert shoot but saw her on the ground. Glaspie followed Joubert outside, and saw the officer on the ground outside the front door. Brown was already in the Grand Am. They drove away, with Brown

driving, but were slowed by construction traffic on the feeder road. Then went through neighborhoods to try to get to MLK. They got back to the VA, and pulled up in front of Lamarcus Colar's apartment. They got out of the car. Joubert grabbed the .45ACP handgun and Brown grabbed the chrome gun. Glaspie wrapped the .45ACP handgun in a t-shirt, gave it to George Powell, and told him to put it up.

They all went into Colar's apartment to change clothes. Glaspie threw the clothing he wore during the robbery into a dumpster. When they went outside, Brown used Glaspie's cell phone. Joubert went upstairs to Patricia William's place. Then Glaspie and Brown went upstairs to the same place. Joubert watched breaking news on the TV. They all stayed there 30 to 45 minutes, smoking weed. Then they all left. Glaspie didn't see Brown leave and doesn't know where he went. He called Tonika to pick him up, and she did so in a Chevy Lumina. Laquinta Carter picked up the White Grand Am used in the crime.

Recent Interview April 21, 2015, HC/BROWN-43099 (provided by County Attorney) Re-Investigation Report, Supplement 3

Glaspie said he didn't want to testify again. He said that on the morning of the murders he went to pick up Brown. It was early and two "little dudes" were playing video games in Ericka Dockery's apartment. Brown came downstairs and they left. They went to Telephone Road to rob the check cashing place there, but the man there "looked at them" so they left. They went back to the Villa Americana when Brown suggested robbing the place where Dockery cashes her checks.

They pulled up at ACE and saw a guy smoking a cigarette outside of the furniture store. They didn't want to seem suspicious, so Glaspie and Brown went into the store while Joubert waited outside for the ACE employee to arrive. A woman (Jones) showed up and Joubert walked her into the store. Glaspie and Brown followed in. He and Joubert went into the second room and Brown stayed in the lobby. They heard a police walkie-talkie, then Glaspie heard three shots. Glaspie and Joubert grabbed the woman and took her into the lobby, and Joubert shot her. Glaspie got in the car last. Brown drove them back to the VA through the back roads. Brown went to a girl's apartment and then they split up. Brown was first to leave.

Analysis

Dashan Glaspie's testimony was the centerpiece of the State's case against Brown at trial. Glaspie obtained a reduced sentence by testifying against the others. Alfredia Jones was killed with his gun, and he told several people immediately afterwards that he was the one who killed her. However, Joubert was convicted of killing Jones, based on Glaspie's testimony.

For further analysis of Glaspie's testimony, see Section V, B1-3, F, and G in this report.

17. Wilbert Green (aka “Cowboy Will”)

Initial Statement to Police April 6, 2003, Offense Report, pg. 2.062

Green went to the Villa Americana on the morning of crime, April 3, 2003. He said that he was not positive of the time, but thinks it was around 11:00 a.m. When he got there, he saw George “Ju-Ju” Powell standing beside Rayfael “Noonie” Viverette's apartment. The door was open. He saw Alfred Dewayne Brown inside. He had known Brown since Brown was very young. Viverette and Brown were inside Noonie’s apartment watching the news coverage of the crime on TV. After a short time, Brown asked Green for a ride home, offering him \$5. Green drove Brown to Ericka Dockery's place and dropped him off.

Video Interview with Inger Hampton [date unknown, likely in 2013] HCBROWN-40394 (Box 10) (provided by County Attorney)

Green stated that he went to the Villa Americana at about 10:00 a.m. or 10:30 a.m. on the day of the crime. He said he couldn’t remember which day it was but knows it was the day of the crime. He had just finished meeting with his friend about a radio, when he saw George “Ju-Ju” Powell outside. Powell asked him if had heard what was being said on the TV news.

Green saw Alfred Dewayne Brown inside Rayfael Viverette’s apartment. Powell asked Green if he could give Brown a ride. Green agreed, and took Brown home. Green believed that the ride took about 15 minutes.

Affidavit to Brown’s Legal Team April 15, 2013 (provided by Brown’s counsel, Tab 19)

Green stated that the day he gave Alfred Dewayne Brown a ride to Ericka Dockery’s was the day *after* the crime. Green says he went to Villa Americana the day after the crime to get money from a man named “Skip” (last name unknown). While there he saw Brown, who asked him for a ride home. Green took Brown to some apartments by Gulf Gate Mall. The sworn statement contains the words: “This all occurred not on the day of the crime, but the next day.”

Statement to Investigators April 29, 2015, Re-Investigation Report, Supplement 13.6, Audio Disc (provided by HPD)

Green said that he went to the Villa American on the morning of the crime to pick up a radio from a man named Skip. When he got there he recognized his friend George “Ju-Ju” Powell. They walked to Rayfael “Noonie” Viverette's apartment where news coverage of the crime was playing on the TV. Alfred Dewayne Brown walked into the room. A few moments later Powell asked Green if he could give Brown a ride, and Green agreed. Green has known Brown since he was young, and also knows Brown’s older brother Aaron “AB” Brown. Alfred Dewayne Brown didn't speak for most of the ride.

Analysis

Wilbert “Cowboy Will” Green was not used during Brown’s trial. He is the only witness left who allegedly placed Alfred Dewayne “Doby” Brown at the Villa Americana on the day of the crime. He gave two statements to the police, in which he varied somewhat on the time. [Note: The original time of 11:00 a.m., and even the second time of 10:30 a.m., would give Brown plenty of time to travel from Ericka Dockery’s to the VA after the three-way phone call starting at 10:07 a.m.]

Green varied on other details in his police statements, initially saying that Brown came out of Rayfael Viverette’s house to talk to him, and later saying that he was watching TV on Viverette’s couch when Brown came in. He was consistent in both police statements that he gave Brown a ride on the day of the crime. However, he signed a sworn statement for Brown’s legal team stating that the day he actually gave Brown a ride home was the day *after* the crime, April 4, 2003. Later, with police, he went back to his original statement.

For further analysis, see the portion of Section I in this report devoted to Green.

18. Ebony Jamanba Hall

(Villa Americana Apartments, 5901 Selinsky Road #250, Houston, Texas)

Police Summary of Interview April 5, 2003, Offense Report, pg. 2.185, HC/BROWN-06626 (provided by County Attorney)

Detectives came to Hall's house around 1:00 a.m. or 2:00 a.m. on April 4, 2003 asking about Dashan "Shon" Glaspie, Elijah "Ghetto" Joubert, and Ernest "Deuce" Matthews. She went to bed after they left, and woke up at 9:00 a.m. or 10:00 a.m. to go to work. She needed socks and her mother told her to look in the closet, where she found a swisher sweet cigar box in a bag in her closet. She opened the box and found two guns. One was a longer black gun and the other was a short black gun. Her mother said that they were Danta "DJ" Fontenette's guns. [Fontenette is the brother of Ernest "Deuce" Matthews]. On her way to work Hall confronted Fontenette's cousin about the guns and he said they weren't the ones used in the murder. When she got home from work her mother said that Fontenette came over and had taken the guns. She went to Shekia Colar's apartment, and Colar informed her that she told Fontenette to get rid of the guns.

Analysis

Ebony Hall's story backs up Danta Fontenette's story, but adds a description of the guns: "One was a larger black gun and the other was a short black gun." According to Hall, Shekia Colar had knowledge of these guns.

19. Alisha Hubbard (aka “Miss Lisa”)
(Villa Americana Apartments, 5901 Selinsky Road #245, Houston, Texas)

April 3, 2003, 2:30 p.m., Offense Report, pg. 2.053

Sargent Denning said that he received a telephone call from a lady named Lisa. She advised him that she knows the shooters in the incident, and that she has one of the suspect’s telephone number. She stated the suspects are “Ju-Ju” “Ghetto” “Lil Red” and “Deuce.” [“Deuce” is the nickname of Ernest Matthews]. “Deuce” according to her was the driver. She stated that these individuals lived around 5901 Selinsky.

Initial Statement to Police April 3, 2003, Offense Report, pg. 2.141

On the morning of the crime, April 3, 2003, Hubbard saw Glaspie, Joubert, and Ernest "Deuce" Matthews by a White Grand Am at the VA. “Shon” Glaspie was holding his .45 pistol. She saw Joubert and Matthews get in a Grand Am and drive away, then she saw Glaspie get in a white Lumina and follow them.

Later that morning, at about 11:15a.m., Hubbard talked to George “Ju-Ju” Powell, who he told her that Glaspie, Joubert, and Matthews had robbed a check cashing place that morning and that a police officer had been killed. Powell said that he (also) had talked to all three of them around 8:00 a.m. that morning.

Hubbard said that Joubert owned two guns that he always had on him, and that both he and Glaspie were “trigger happy.” Matthews is a little older, is 5’7, and also carries a gun. They usually hang out around Shekia “Nikki” Colar’s apartment, which is known as “The Dope House.” Hubbard said that she tried to shoot Joubert in 1996 during a confrontation, and that there should be a police report about it.

Live Line-Up April 5, 2003, Offense Report, pg. 2.188

Hubbard recognized Dewayne Brown, Elijah Joubert, and Dashan Glaspie. Ernest “Deuce” Matthews was not brought to the line-up.

Trial Testimony (Joubert) October 4, 2004, Vol. 26, pg. 202

Hubbard's trial testimony was similar to her most recent statement, except that she identified only "Shon" Glaspie, "Ghetto" Joubert and "Doby" Brown as talking in the parking lot of the VA that morning. She said she was mistaken in her original identification of "Deuce" Matthews.

When asked about what she discussed with her sister Latonya later that morning, she replied: "I told her that Ghetto, Shon, went and robbed the ACE check cashing place on MLK." She did not mention Brown as being involved.

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 66

On the day of the crime, April 3, 2003, about 8:00 a.m., Hubbard saw "Ghetto" Elijah Joubert, "Shon" Dashan Glaspie, "Deuce" Ernest Matthews and Alfred Dewayne "Doby" Brown in the parking lot of the VA. [Note: There was no mention of Brown in her first statement.] She said they were near a white Pontiac Grand Am. Glaspie and Joubert were talking together on one side of the car, and Brown was standing off to the side. She remembers Joubert saying: "Are you ready to do this?" She does not remember if Glaspie responded. Hubbard went into the house of her friend Tanya Barnes to watch TV and cook, and came out 30 minutes later. She saw Glaspie loading a .45, which she identified as the weapon they had in court.

Later in the day, Hubbard talked to George "Ju-Ju" Powell. About 1:00 p.m. or 1:30 p.m., she received a call from her sister LaTonya Hubbard. They decided to call the police to tell them everything they knew, and did so. She told the police that she was sure that Joubert, Glaspie, and Matthews had committed the crime, but only said that because their names were on TV. [Note: it is highly unlikely that any suspects' names were on TV prior to her statement at 2:30 p.m. on April 3.]

On cross examination, Hubbard denied telling the police that Matthews got into a car with the other suspects even though her witness statement plainly says this. She said she was partially blind in her left eye. She admitted that she saw Glaspie and Joubert every other day at the VA, but that Brown wasn't around very much and she didn't really know him.

Statement to Defense Investigator Richard Reyna October 19, 2003, [Note: the date appears incorrect.] (provided by Brown's counsel, Tab 12)

Hubbard initially told the police that she saw Dashan Glaspie, Elijah Joubert, and Ernest "Deuce" Matthews on the morning of the crime in the parking lot of the VA. She watched them drive away.

Her second statement says that George "Ju-Ju" Powell told her that "Deuce" Matthews got out of the car when Brown got in. She also did not read this statement when she signed it.

Before the trial she tried to tell Prosecutor Dan Rizzo that Brown had nothing to do with the crime. Rizzo told her that if she didn't stick with her (second) statement he would charge her with perjury and theft of the \$10,000 crime stoppers money she was given. She was frightened, so she testified at trial to what Rizzo wanted to hear, rather than the truth. Brown's lawyers never tried to talk to her before the trial.

Statement to Defendant Brown's Team May 7, 2008 (provided by Brown's counsel, Tab 13)

On the morning of the crime, April 3, 2003, at about 7:50 a.m., Hubbard saw Elijah "Ghetto" Joubert, Dashan "Shon" Glaspie, Jesse "Smooth" Coleman, George "Ju-Ju" Powell, and Jero "JD" Dorthy, in the VA parking lot. [Note: She mentions several new people but does not mention "Deuce" Matthews in this statement. She will change back to her original version again in her next statement.]

Hubbard said she confused Dorthy with Brown in her earlier statements and testimony because they look alike. Shortly after 8:00 a.m. she went outside and smoked a joint with Joubert and hung out with the guys who were there. Around 8:20 a.m. or 8:30 a.m. she watched Jero Dorthy walk north. She saw Glaspie pull out and load two guns, putting one of them in his waistband. She heard Joubert say "Are we going to do this?" and Glaspie respond "Yeah let's do it." They got into a car and drove out of the parking lot.

Hubbard said that around 6:45 p.m. on April 23, 2008, Kishone Jefferson called Hubbard and they had a telephone conversation about the crime and events surrounding it. Kishone Jefferson told Hubbard that the evening after the crime she travelled down I-45 toward Galveston with Aaron "AB" Brown, Dorthy, and another

girl to dispose of the gun that Dorty used in the crime. Aaron Brown wrapped the gun in a t-shirt and threw it off the Galveston Bridge into the water. Hubbard added that the next day, on April 24, 2008, at about 11:45 a.m., Jefferson told Hubbard over the phone that she had the clothing worn by the suspects during the crime, including a bomber jacket worn by Dorty.

**Testimony with ADA Inger Hampton and defense investigator Richard Reyna
March 11, 2011, HC/BROWN-08401 (provided by County Attorney)**

On the morning of the crime, April 3, 2003, Hubbard woke up early to watch Jerry Springer. She went outside and saw Dashan “Shon” Glaspie, Elijah “Ghetto” Joubert, Dewayne “Doby” Brown, George “Ju-Ju” Powell, Ernest “Deuce” Matthews, and Jesse “Smooth” Coleman (now she names everyone). She shared a joint with them and talked to them for a minute. Brown left an hour earlier than everyone else. Dorty walked around the corner. Then she saw Glaspie and Joubert drive around the corner and, she believes, pick up Dorty.

Later, around 10:00 a.m., Powell knocked on her door and told her to turn on the news, saying “Shon and them did that.” She called her sister and then the police, because she knew victim Alfredia Jones. When she gave her original statement, the police asked her if Matthews was out there and she said yes. She meant to say “Dorty” instead of “Deuce” or “Doby.” The police kept changing her statement before she wrote it. Powell may or may not have told her that Matthews was involved, she isn’t sure. She told ADA Dan Rizzo it was Dorty before the trial but he threatened her until she agreed to say it was Alfred Dewayne Brown. She said she believes that Kishone Jefferson, Aaron “AB” Brown, and Shekia Colar had knowledge of the crime. She said that Glaspie, Joubert, and Dorty were the three most ruthless guys in the VA. Dorty was a “really bad character” you didn’t mess with, who was practically raised by Catherine Brown (Aaron and Dewayne’s mother).

Hubbard said that Aaron Brown and Dorty hid the gun that was used in the crime in Galveston. She stated that Kishone Jefferson had a trash bag full of the clothing they wore in the crime. Hubbard became repeatedly confused during her testimony, switching names trying to correct herself many times.

Police Summary of Interview April 29, 2015, Re-Investigation Report, Supplement 6

On the morning of the crime, April 3rd, 2003, Hubbard came out of her friend Tanya Barnes's apartment and saw Dashan Glaspie, Elijah Joubert, Ernest "Deuce" Matthews, and two or three other boys, but *not* Alfred Dewayne Brown. She saw Glaspie messing with two guns by a white car. She heard Glaspie and Joubert talking about getting ready to rob a check cashing place. Then Glaspie, Joubert, and Matthews got in the car and drove off.

Later when she was in the shower George Powell knocked on her door. He told her about Glaspie and Joubert robbing a place, so she called the police. She told the police that she saw Glaspie, Joubert, and Matthews because it was true. Later she talked to Matthews and he said he had gotten out of the car at the front office and had nothing to do with it. When she met with the police they kept telling her it was Brown, so she went with the police story.

Hubbard mentioned (randomly) that Jero Dorty sold dope with Glaspie. She said that during the time period she was meeting with defense investigator Reyna she was assaulted by "Dead End Rob" [name unknown] and "Gay Nikki" [Shekia Colar]. She said she has had memory problems since a DWI accident in 1995. She claimed that some of the tissue from her brain was put in her foot, and since then she has had seizures.

Analysis

Alisha Hubbard has given multiple completely different statements. She was important to the State as witness at Brown's trial because (at least for the time period of the trial) she placed Brown with Glaspie and Joubert before the crime near the vehicle and weapon used in the crime.

Looking at the totality of her statements, they are not merely inconsistent but extremely suspect. Depending on her audience, she stated that Ernest "Deuce" Matthews either was or wasn't there, that Alfred Dewayne Brown either was or wasn't there, that Jero Dorty either was or wasn't there, and she differs on nearly every other detail as well. She admitted that she was high on drugs at the time she allegedly saw the suspects, claimed to be blind in her left eye, and claimed to suffer from memory loss due to a brain injury. She is inconsistent, untrustworthy, and unusable.

Still, it is interesting that her *original* identification of the third man with Glaspie and Joubert was Ernest “Deuce” Matthews, not Brown. This coincides with the statement of LaTonya Hubbard, who saw Matthews (not Brown) with Glaspie and Joubert immediately before the attempted robbery of Leo Foisner. For unknown reasons, Matthews was never put in any police line-up.

20. LaTonya Hubbard
(10950 Tanner Road #3503, Houston, Texas)

Initial Statements to Police April 3, 2003, Offense Report, pg. 2.143, (provided by Brown's counsel, Tab 11)

LaTonya Hubbard (sister of Alisha Hubbard) said that around 7:45 a.m. she and Latisha Price were driving to take their kids to school. They stopped at a gas station at the corner of Almeda-Genoa and Telephone Road. There she saw three men she knew personally: Dashan "Shon" Glaspie, Elijah "Ghetto" Joubert and Ernest "Deuce" Matthews. She stated that she knew all three from the Villa Americana, they hung out there together and sold dope. Joubert and Matthews were pacing outside the store while Glaspie was coming out of the store. She stated that the gas station was near a check cashing place. The men were standing near a white Pontiac Grand Am with a hubcap missing. She stated that Glaspie was 6'3" (he is reportedly 6'5") and skinny; Joubert was 5'7" (he is 5'11") and muscular; Matthews was a little older, 5'9", skinny build, with a jacket with a stripe on the side [Note: This matches the visual description of one tall man and two shorter men made by Vanan Saukam and James Wheat. Alfred Dewayne Brown is 6'2."]. She said she saw the crime on the TV news, and called the police. She stated that "I am sure they done this and I can identify all three of them if I see them again."

Live Police Line-Up April 5, 2003, Offense Report, pg. 2.188

Hubbard did not recognize Alfred Dewayne Brown, did recognize Elijah Joubert, and did recognize Dashan Glaspie. For some reason, Ernest "Deuce" Matthews was not presented during the lineup.

Trial Testimony (Joubert), October 4, 2004, Vol. 26, pg. 186

On direct examination by the State, Hubbard identified Alfred Dewayne "Doby" Brown (instead of Ernest "Deuce" Matthews) as the third man at the gas station. She said it was hard to tell because of "clothing on his head."

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 121

Hubbard testified that between 7:00 a.m. and 8:00 a.m. the morning of the crime, April 3, 2003, she was taking her daughter to school with Latisha Price and stopped at a gas station on Alameda-Genoa and Telephone Road. While Price went into the store, Hubbard saw a White Grand Am by the store. She had previously seen Glaspie driving a car like this. Hubbard saw Glaspie at the gas station and also Joubert. She saw a third man wearing dark clothing and a hood, but didn't recognize him or see his face or height. She originally told the police that this man was Ernest "Deuce" Matthews, but only because she had heard that from other sources. She volunteered at trial that this was "hearsay." She believed there was a hubcap missing on the car but doesn't remember which side.

Statement to Brown's Team August 7, 2008 (provided by Brown's counsel, Tab 11)

Hubbard knew that murder victim Alfredia Jones had dated her brother Tim for a few months. She told investigators that she had seen Dashan "Shon" Glaspie, Elijah "Ghetto" Joubert, and Ernest "Deuce" Matthews at the gas station on the day of the crime, but she had never really seen Mathew's face. Later police brought her photographs of Brown, who she did not know and could not identify, but police told her that he was the third person. She testified at trial that Brown was the third person because prosecutor Dan Rizzo told her to, but in truth she could not identify him.

Testimony with Inger Hampton and Richard Reyna March 11, 2011, HC/BROWN-08401 (provided by County Attorney)

Hubbard said that she saw Dashan Glaspie and Elijah Joubert at the gas station on Alameda-Genoa and Telephone Road. She was with her daughter and her best friend Latisha Price. Hubbard didn't talk to them, but Price talked to Joubert – who pretended not to know her. She didn't see a third person at all, but there could have been one. She initially identified Ernest "Deuce" Matthews as the third person, because everyone was saying his name, but was never sure it was him. The night before the crime, people were shooting guns around the VA. She said that there are lots of guns there, even AKs.

Analysis

LaTonya Hubbard, her sister Alisha Hubbard, and their friend Latisha Price, are the first witnesses to identify Dashan Glaspie and Elijah Joubert together on the day of the crime. They are the first witnesses the police contacted from the Villa Americana, and remain throughout the investigation the only people associated with the VA to come to the police of their own accord. All initially identified Ernest “Deuce” Matthews, not Alfred Dewayne Brown, as the third man likely involved. LaTonya Hubbard believed this strongly enough at first to say "I am sure they done this and I can identify all three of them if I see them again." Later, however, despite not even recognizing Alfred Dewayne Brown in the police line-up, she identified Brown as the third man during Joubert’s trial, seriously calling into question her credibility. She did not identify anyone as the third man at Brown’s trial, and later said she may not have seen a third man at all.

21. Tonika Hutchins

(Father's residence: 129 Winkler Drive, Houston, Texas)

Grand Jury Testimony April 28, 2003, HC/BROWN-08935 (provided by County Attorney)

Hutchins stated that she lived with her father Tony Jefferson at 129 Winkler Street. She hadn't been to jail. She had been dating Dashan "Shon" Glaspie since February. She said that she knew that he dealt marijuana.

The night before the crime, April 2, 2003, Glaspie picked her up at her father's house around 11:25 p.m., and they went together to Jack in the Box. They went to a hotel around 4:00 a.m. and returned to her father's house around 6:00 a.m. Glaspie stayed until 6:30 a.m.

She knew Alfred Dewayne Brown because Brown used to date her "God-sister" Laquinta Carter. Hutchins said she had never heard that Brown was a drug dealer or a "jacker" (thief). Brown got money from girls he stayed with. She had heard that Elijah "Ghetto" Joubert was a robber. Brown told her that he was at home during the crime. Glaspie told her that he was in a furniture store with George "Ju-Ju" Powell, waiting to buy weed from a Mexican, when they heard gunshots and went outside and Joubert jumped in the car. She said Glaspie never said Brown was involved.

The morning of the crime, when Hutchins was with Glaspie, Glaspie got a call from Joubert. Glaspie also called Brown that morning but couldn't wake him up. Glaspie never went to sleep the evening of April 3.

Glaspie left her father's house in her car about 6:30 a.m. and didn't tell her where he was going. At about 10:30 a.m., Glaspie called Hutchins and told her to pick him up at the Villa Americana. She picked him up and took him to her father's place, then to a hotel, but they didn't talk about the crime.

Analysis

Tonika Hutchins was slated to testify at the trial of Elijah Joubert but died in a car accident on the way to Joubert's trial. Laquinta Carter was driving the car. The record of her Grand Jury testimony is one of extreme intimidation. Examples of highly questionable conduct by the Grand Jury are in Section H of this report.

22. Kishone Jefferson
(5602 Selinsky Road #79, Houston, Texas)

Statement to Police January 16, 2004, Offense Report, pg. 2.313

Jefferson stated that she and Alfred Dewayne “Doby” Brown do not get along, and she had heard of him doing robberies with Dashan “Shon” Glaspie and Elijah “Ghetto” Joubert. A few days before the robbery, Brown threatened her with a silver colored pistol. The night before the crime, at 3:30 a.m. in the morning, Aaron “AB” Brown (her boyfriend) and Joubert showed up at Jefferson’s house and spent the night there. The next morning, April 3, 2003, she woke up at about 7:00 a.m. and saw Joubert wake up and leave the house. She went back to bed and woke up again at about 4:00 p.m. by Catherine Brown, Aaron and Dewayne’s mother. Aaron “AB” Brown left her house at about 4:00 p.m.

Later, Aaron Brown called Jefferson and told her to turn on the TV news. Jefferson watched the news about the crime and recognized Glaspie from the police sketch. She asked Aaron Brown if Alfred Dewayne Brown had been involved. Aaron Brown said he didn’t know, but said “I told him he was going to need me, he let the money go to his head.” She told Aaron Brown that she thought his brother did the robbery. Alfred Dewayne Brown did not come to her apartment on the day of the crime, as far as she knew. She has no personal knowledge of what happened to Brown’s shirt or gun after the robbery.

A few days before her statement to the police, Wilbert “Cowboy Will” Green came to her door and told her that he told the police his story. Green told her that he had gone to Rayfael “Noonie” Viverette’s apartment on the day of the crime for some “sherm” (tobacco mixed with marijuana, dipped in PCPA embalming fluid) and saw Brown on Viverette’s couch watching TV news. Brown offered Green \$5 to give him a ride home and Green agreed, taking him home. Jefferson said that Green told her that Brown lay down in the seat every time they passed a police car (Green never said that in any of his statements).

Police Summary of Interview to Police August 24, 2004, Offense Report, pg. 2.331

Immediately prior to this statement, Jefferson was arrested for aggravated assault. Aaron “AB” Brown filed the complaint against Jefferson. She made comments regarding the murder weapon that was used to kill Officer Charles Clark

while she was being arrested, so investigators spoke with her. Initially, she stated to investigators that Aaron Brown drove his car into hers (rather than the other way around, as AB Brown claimed), and that she did not attack him with a knife. Jefferson rambled about several different topics. She said that at one point in the previous spring that Aaron Brown was high on “X” (Ecstasy) and told her about getting rid of a gun. Another time Aaron Brown told her that “the laws were trying to kill his brother” and that if he (presumably Aaron Brown) went down he would take her down with him, because she knew too much.

Another time, sometime in April or May 2003, Jefferson saw Aaron Brown give money to a man named Stefon who went by “Godson.” Aaron Brown told her that Stefon had done a “job” for him. Aaron Brown said that he bought the shirt and gun Dewayne Brown used to kill Officer Clark from Stefon. Aaron Brown said that he threw the gun off the ferry and burned the shirt. Jefferson refused to let any of the conversation be recorded.

Police Summary of Interview with Police April 29, 2015, Re-Investigation Report, Supplement 12

Jefferson was very irritated, yelling and cursing at investigators. She stated that she didn’t know anything regarding the case. She said that around the time of the crime she was a crack addict and pill abuser, and has a hard time remembering anything from her past. She stated that she didn’t know Alisha Hubbard and that she didn’t know anything about clothes or a weapon. She said Aaron “AB” Brown stopped communicating with her after a paternity test was negative.

Analysis

Kishone (spelled differently throughout the investigation as Keeshawn, Keshoyn, and Keshon) Jefferson is an interesting but ultimately useless witness in this case. She was in close proximity to Aaron “AB” Brown throughout the timeline and presumably many of the other parties involved in the crime as well. Her earlier statements support Elijah “Ghetto” Joubert’s story that he spent the night with Jefferson and Aaron Brown the night before the crime, which is directly contra to Dashan “Shon” Glaspie’s testimony that Joubert stayed at the VA. Jefferson’s earlier statements suggest that Aaron Brown was involved in disposing of the gun and clothing used in the crime, something also mentioned by Jero Dorty, Ericka Dockery, and later Alisha Hubbard. Jefferson is not interested in cooperating in any way with a new investigation.

23. Thomas Mathew Jolivet (aka “Muffin”)
(Villa Americana Apartments, 5901 Selinsky Road #157, Houston, Texas)

Witness Statement April 4, 2003, Offense Report, pg. 2.085, HC/BROWN-06489 (provided by County Attorney)

Jolivet states that on the evening of April 3, 2003, at about 9:30 p.m., he was outside of his apartment with his cousin Rayfael “Noonie” Viverette when a man came up to Viverette and offered to sell him a .45ACP handgun with a laser sight for \$50. The man was a black male, about 28 years old, 5’9, clean shaven with a gold tooth. Jolivet knew him from around the apartments but doesn’t know his name. Viverette told the man he would hold the gun for the night and think about whether he wanted to buy it. Viverette put the gun upstairs in Letisha “Tish” Simmons’ house. That was the last time Jolivet saw it.

Trial Testimony (Brown) October 12, 2005, Vol. 30, pg. 217

Jolivet stated that sometime in the evening on the day of the crime, April 3, 2003, he was having a cookout at the VA, and George “Ju-Ju” Powell approached him to sell him a gun. He was shown in Court the same .45ACP handgun used in the crime, and he identified it as the gun Powell offered. Jolivet paid Powell \$50 up front with the promise of \$100 later.

A few minutes later, Rayfael “Noonie” Viverette returned to the VA. Jolivet showed Viverette the gun, which Viverette took. (Viverette said later that Viverette’s money had been used to purchase it).

Later that night, Jolivet went to Letisha “Tish” Simmons’ house. Viverette was there with the gun. Jolivet said that he had never met Dashan Glaspie, Elijah Joubert, or Alfred Dewayne Brown. He related that he didn’t wake up until the afternoon of April 3, 2003, though Viverette may have awakened a little sooner. Jolivet did not know and had never heard of Wilbert “Cowboy Will” Green.

Analysis

Thomas Jolivet supports the story that Rayfael “Noonie” Viverette told the police with minor variations on the details. Importantly, both men, every time they told the story, said that they did not meet George “Ju-Ju” Powell until the evening

of April 3. If true, this means that even if Powell was with Alfred Dewayne Brown on the day of the crime at Viverette's house like he claimed, it would not have been until the evening. (This is inconsistent with Wilbert Green's timing of Brown's ride home.)

24. Reginald Lewis Jones

(Plum Creek Apartments, 6969 South Loop East #406, Houston, Texas)

Initial Statement to Police April 4, 2003, Offense Report, pg. 2.129

Eighteen year old Reginald Jones is Ericka Dockery's nephew. He was staying at her townhouse at the time of the crime. He said that Alfred Dewayne Brown owns a small silver gun. Jones said that he gave Brown a ride to the Villa Americana the night before the crime, then gave Jones's half-brother Terrance a ride. Brown returned to Ericka Dockery's apartment at 11:30 p.m.

On the day of the crime, Jones woke up around 9:30 a.m. or 10:00 a.m. No one else was up. He started playing video games. Brown came downstairs at around 1:00 p.m. From the couch where he was playing video games, Jones had a good view of the front and back doors and also the stairs. He would have known if Brown came in from somewhere else. Jones asked Brown if he had seen the TV news and Brown said that he had. (Implicitly, he watched a TV upstairs).

Grand Jury Testimony April 21, 2003, HC/BROWN-8814 (provided by County Attorney)

Jones was 18 years old, and didn't work or go to school. He was staying in Ericka Dockery's place at the time of the crime. The night before the crime, Alfred Dewayne Brown and Dockery had a fight. Afterwards, Jones gave Brown a ride to the Villa Americana. The car he used to drop Brown off was Dockery's car. When Brown got out of the car at the VA he approached another white car. Then Jones dropped his brother Terrance off in the third ward. He stayed up at Ericka's until midnight with his brother Ruben playing video games and then fell asleep.

The next day, April 3, he woke up around 9:30 a.m. or 10:00 a.m. and went downstairs to play video games again. He started watching breaking news on the TV. Then Brown came downstairs. Jones said Brown had an upset stomach the whole day, and he cooked a meal for him. At some point in the late morning or early afternoon a phone call came in for Brown that Ruben answered and then passed off to him.

Affidavit April 9, 2010 (provided by Brown's counsel, Tab 9)

Jones says that Alfred Dewayne Brown was at home with him on the day of the crime. Jones was in the living room as early as 9:00 a.m. playing video games and watching TV. He saw Brown come down the stairs into the living room sometime between 10:00 a.m. and 11:00 a.m. At that time Jones had been watching breaking news about the robbery for around 5 minutes on Channel 26. Brown must have been home since at least 9:00 a.m. since Jones did not see him enter or leave the apartment. Jones could see the front and back doors from where he was sitting and there was no other way to get into the apartment. He said that none of Brown's lawyers ever spoke to him. The police interviewed him many times and always intimidated him. They pressured him to sign an initial statement which said that Brown came downstairs at 1:00 p.m., which was not true, because Brown came downstairs earlier. It was clear to Jones that the police, detectives, and Grand Jury only wanted him to say what they wanted to hear.

Analysis

Reginald Jones's Grand Jury testimony was clear, straightforward, and unchanging. His testimony was not accepted by the Grand Jury, apparently because it gave Alfred Dewayne Brown an alibi and did not fit the narrative that they had already decided. The Grand Jury interrogated, pressured, and attempted to undermine Jones' testimony at every step. They led his answers and tried to get him to confess that Brown actually entered the living room from outside the apartment. They accused him of being coached, and suggested repeatedly that he had to have been off on his times. (See transcript excerpts in Section V, D. of this report.)

Eventually the Grand Jury dismissed Jones's testimony and ruled him out as a witness, even though he plainly provided an alibi for Brown. Jones was never called at trial by Brown's defense team. Indeed, they never even talked to him. Thus, Reginald Jones, a legal adult who provided a clear alibi for Alfred Dewayne Brown's location at the time of the crime, was forgotten in the greater landscape of the case.

25. Ruben Lamont Jones

(Plum Creek Apartments, 6969 South Loop East #406, Houston, Texas)

Witness Statement to Police April 4, 2003, Offense Report, pg. 2.131

Fifteen year old Ruben Jones is also Ericka Dockery's nephew, who was also staying with her at the time of the crime. He said that the night before the crime, April 2, 2003, Alfred Dewayne "Doby" Brown and Ericka Dockery got into a fight. Then his brother took Brown to the Villa Americana. He said that Brown got back to the house at about 11:00 p.m. that night and went to sleep on the couch at 11:30 p.m. Jones said he stayed up all night playing GameCube.

Grand Jury Testimony April 21, 2003, HC/Brown-08877 (provided by County Attorney)

Jones stated that he was 15 years old. He stayed with Ericka Dockery on weekdays for school zoning. He had been in trouble before for robbery. He stayed up the night before the crime playing video games and didn't go to school the next day. The night before the crime his brother Reginald dropped Alfred Dewayne Brown off at the Villa Americana around 10:00 p.m. A few hours later, Ruben Jones saw Brown come home in a white Chevy truck. Brown came in and said that he didn't want any phone calls.

Jones played video games until around 6:00 a.m. in the morning. He was still awake when Ericka Dockery came downstairs to talk to Brown on the couch. Jones went upstairs to bed and didn't wake up until around 3:00 p.m. He answered the phone and a woman was shouting about Brown maybe being involved in the crime.

Interview April 22, 2015, Re-Investigation Report, Supplement 3.3

At that the time of the 2015 interview, Jones was in prison for murder. He said he was 14 when the incident happened, and was living with Ericka Dockery because his sister was murdered. He said that he didn't remember the day of the incident. He only remembered that someone called him a "nigger" when he was taken in for questioning.

Analysis

Unlike his brother Reginald, Ruben Jones was asleep during the roughly three hour critical window of 6:48 a.m. to 10:08 a.m., and therefore is neither able to confirm nor deny an alibi for Alfred Dewayne Brown. It is of note that he saw Brown come home in a white truck the night before the crime. Wilbert Green drove a white truck.

26. Elijah Dwayne Joubert (aka “Ghetto”)

Police Summary of Initial Interview April 4, 2003, 2:30 p.m., Offense Report, pg. 2.116, HC/BROWN-56597 (provided by County Attorney)

Elijah Joubert began the interview by being open and talkative. He admitted to being a robber and hearing about the crime and Dashan Glaspie and Dewayne Brown’s involvement. He said that he had heard these things on the street. He admitted having cased out the first check cashing place (Leo Foisner’s). He denied being involved in the second check cashing place (ACE) and denied killing anyone: “I didn’t off anybody, not the lawman or that lady.” Investigators allowed him to listen to a portion of Glaspie’s recorded confession and he broke down and admitted his involvement in the robbery.

Joubert said that he led “the woman” (Alfredia Jones) into the store by pretending to have a gun. He heard her give the code 24 to sound the alarm. Brown saw the police officer first and was on top of him shooting him. Joubert grabbed the woman by the neck, and Glaspie executed her. Brown had a small chrome gun.

After the crime, Joubert called his girlfriend “LA” and after about 45 minutes she picked him up. Later, around 1:00 p.m., Glaspie tried to calm him down over the phone by saying that the police were looking for a car with no hubcaps (the car they drove had hubcaps).

Affidavit April 22, 2008 (provided by Brown’s counsel, Tab 15)

Joubert recanted his earlier statements. He said Dewayne Brown was not involved in any way with the crime and was not present at the crime scene. Joubert stated he never even saw Brown on the day of the crime.

Transcript of Interview with ADA Inger Hampton and Don Cohen May 24, 2011, HC/BROWN-29551 (Box 4) (provided by County Attorney), (provided by Brown’s counsel, Tab 18)

Dewayne Brown’s defense team were not present at this meeting. [Note: Much of Joubert’s ramblings are hard to follow.]

Joubert recalled his interview with Brown's attorneys which resulted in his affidavit concerning Brown's non-involvement: "I'm like, yeah, they know. He's figuring it out... So he asked me, would I be willing to write an affidavit to him and tell what really happened." Joubert expressed his annoyance with Brown's counsel, because he did not want his name associated with pointing the finger at anyone. "I'm just trying to – something that didn't happen and get ready to – not saying that I want to – the actual culprit to suffer, but why should this man (Brown) suffer."

Joubert stated that the night before the murder, Wednesday, April 2, 2003, he was gambling at Shekia "Nikki" Colar's apartment. He was there with Dashan Glaspie, Aaron "AB" Brown, Jero "JD" Dorty, and Ernest "Deuce" Matthews. Joubert was getting high on codeine. Glaspie pulled him outside and told him that "the robbery is on." They wanted to "pull it early," so it didn't make sense for Joubert to go all the way back to his girlfriend's place. He slept at Aaron "AB" Brown's and Kishone Jefferson's place. Glaspie called him early in the morning, around 5:30 a.m. and told him "it's about to go down." He talked to AB Brown that morning as he woke up.

Glaspie and Jero Dorty picked him up. They drove around, from approximately 6:30 a.m. to 6:45 a.m., and went to a gas station to get breakfast. They saw some girls that seemed to know them. Joubert pretended not to know them. Glaspie pointed out that there was a check cashing place next door, and suggested they try to rob it. Joubert and Dorty walked over to it, but the man who was opening the store saw them, so they turned around and went back to the car. They went back to the VA and hung out until it was time to rob the second place (ACE).

They drove to ACE, and Glaspie and Dorty went into the furniture store. When they walked out of the store a woman in a red car pulled up to the check cashing place. Glaspie and Dorty walked the woman into the store while Joubert stayed in the car. A police car pulled up, and Joubert jumped in the back seat of the Grand Am. He heard gunshots, then Glaspie and Dorty jumped into the car.

They drove back to the VA and went to Shekia Colar's apartment. Glaspie changed clothing and Dorty left out the back door. Then he saw Patricia "Trish" Williams downstairs and gave her money for her (apartment) keys. Glaspie and Joubert went into her apartment. Joubert called his girlfriend from there to get her to pick him up.

Glaspie called Joubert later when he was at Tammie Rodger's place, and told him that he was with his girlfriend (Tonika Hutchins) in the parking lot. Joubert went out and talked with him. They discussed the failed robbery. Glaspie told Joubert that he had people on the inside who worked at ACE (either Kishone Jefferson or "Pebbles" Holmes), but Glaspie was just "on some bullshit." He did not see Dorty after that, but they did talk on the phone two times later that day. He saw Glaspie shoot but did not see Dorty shoot.

Joubert said that the police led him into naming Alfred Dewayne Brown, especially when they found out that his brother was Aaron "AB" Brown, where Joubert stayed the night before the crime. He said that Dorty was an outsider at the VA, and that Dorty wasn't from "the bricks." Joubert said that it has been weighing on him that Brown is in jail. He only named Brown because Glaspie named him first and that was the story the cops wanted to hear. He said that Aaron "AB" Brown knows the truth, and so does Harold "Sweets" Dayon. He stated that he has never seen Alfred Dewayne Brown with a gun. He reiterated that Brown was not at the crime scene. He predicted that Jero Dorty will deny his involvement, but will be found out when everything comes out.

Joubert said he had nothing to gain from this statement and he knew he wasn't going to get a deal from it. He didn't want to waste anyone's time. He saw George "Ju-Ju" Powell, and Amos Bass at the VA on the day of the crime, but not Wilbert "Cowboy Will" Green. He heard that Dorty threw the second gun into the bayou. Joubert said that Dorty wasn't their usual third on robberies, it was a close friend who he isn't going to name.

[Side note: At one point in the interview ADA Inger Hampton said: "*You know, we've got a witness that says that Doby told AB that he shot the cop.*" There is no support for this statement anywhere in the evidence.]

Police Interview on Death Row 2015, Audio File (provided by HPD)

Joubert claimed that his previous affidavit and his pointing the finger at Jero Dorty was only for a payment of \$2,000 that Dewayne Brown's defense team promised him, which he was never given. He stated that he knows how to play the game now and can work with investigators if they have something to give him.

He was not able to explain to the police the phone call from Ericka Dockery's apartment to Alma Berry's house. He claimed that Alfred Dewayne Brown must

have gone back to Dockery's apartment from the VA in time to make the phone call, because the only place it could have come from was her house. He denies that Brown made a three-way call from Patricia William's place. He swears they never called Dockery's house from the VA. He claimed that while he was in jail Brown had his cell phone, which is why Dockery knew his number.

Joubert stated that Dorty had nothing to do with the crime. He claimed that Brown told him while they were on death row together that Wilbert "Cowboy Will" had given him a ride home. "This is not about morality anymore... I don't like police so why would I help you unless you help me."

Analysis

Elijah "Ghetto" Joubert, the only one of the three suspects currently on death row, is an extremely unreliable witness. The statements he has given were purely for his own survival. His initial confession came only after he heard about Dashan Glaspie's confession. He closely mirrored it, merely substituting Glaspie as the gunman who killed Alfredia Jones. The latest statement he gave in 2015 is frantic, as if he is searching for any angle, any way to position himself back into the case and off death row.

The only statement of his which stands out is the one he made in 2011, when he had a lengthy interview with ADA Inger Hampton explaining in extreme detail an order of events before, during, and after the crime – which includes Jero Dorty rather than Brown.

27. Ernest Tyrone Matthews (aka “Deuce”)
(Grandmother’s residence: 9006 Vine Arbor, Houston, Texas)

Statement to Police April 5, 2003, Offense Report, pg. 2.207

Matthews denied being a part of the crime. He said he drove to his girlfriend's house at about 10:00 p.m. the night before the murders, and went to bed around 1:00 a.m. or 2:00 a.m. He woke up Thursday, April 3, 2003, sometime around 10:00 a.m. or 10:30 a.m. He drove to the VA to pick up a man named James (last name unknown), so that James could wash his car. James dropped him off at his apartment, went to wash his car, and then returned it in the afternoon.

Matthews said he did not talk to Dashan Glaspie, Elijah Joubert, or Alfred Dewayne Brown on the day of the killings. Matthews first heard of the crime from his grandmother around 4:00 p.m. the day of the crime. She was worried because he had the same type of car that was used in the murder, a white Pontiac Grand Am.

He talked to his brother Donta “DJ” Fontenette the next day (Friday, April 4). Fontenette told him he was at Shekia “Nikki” Colar's apartment at the VA, #153, when the police came asking questions about Glaspie. Fontenette said the police were also asking about Matthews. Matthews also said that he talked to George “Ju-Ju” Powell on Friday afternoon, April 4. Powell told Matthews that he told the police he had not seen Matthews at the VA the morning of the crime.

Powell said that Glaspie had given him a .45 to hide in Rayfael “Noonie” Viverette's apartment. Matthews said that he has a Colt 1911, which he keeps at his grandmother's house, and that Fontenette had taken it and hidden it in a cigar box with a gun of his own in Mary Lee Hall's apartment, #150. He did not know what type of gun Fontenette had.

Interview April 26, 2015, Re-Investigation Report, Supplement 17, Audio Disc (provided by HPD)

Matthews denied knowing anything about the crime, didn’t remember the day of the crime, and didn’t think he looked like Alfred Dewayne Brown. He said he didn’t know about any guns. He said he talked to Brown in jail and Brown said they were offering him 40 years but he was not going to take it. Brown said he would go all the way.

Analysis

Matthews was one of the primary initial suspects in the investigation. He was named as the third man with Glaspie and Joubert by LaTonya Hubbard, who said she saw them at a gas station next to the scene of the attempted robbery of the first check cashing store. He was also named as the third man with Glaspie and Joubert by Lisa Hubbard, who said she saw them at the VA together before the ACE crime.

Within 24 hours after the murders, police switched their target from Matthews to Alfred Dewayne Brown. By April 5, two days after the crime, Matthews was no longer treated as a suspect. He was never put in any of the lineups.

28. George Morgan Powell (aka “Ju-Ju”)
(Mother’s residence: Villa Americana Apartments, 5901 Selinsky Road #129, Houston, Texas)

Initial Interrogation April 4, 2003, 1:20 a.m., Offense Report, pg. 2.066

Powell said he was returning from a store after buying cigarettes, and saw Dashan “Shon” Glaspie and Elijah “Ghetto” Joubert standing in the parking lot. He talked to them for a minute, and then Glaspie and Joubert moved away to talk privately.

At about 8:30 a.m., Alfred Dewayne “Doby” Brown came out of an apartment. Brown, Glaspie, and Joubert got into a car and left. About 30 minutes later they came back fast. Joubert and Glaspie were in the front seats, and Brown was in the back. Glaspie handed Powell a sweater which he gave to Donta “DJ” Fontenette, Ernest “Deuce” Matthews's younger brother who lives with Shekia “Nicki” Colar in apartment “250-something” [#253]. Glaspie gave Powell a .45ACP handgun with a laser beam to hide in Rayfael “Noonie” Viverette's apartment, #157. About “a minute” later, Glaspie's girlfriend picked him up in a white Lumina, Joubert's girlfriend picked him up in a blue Ford Explorer, and Brown left in Glaspie's white Pontiac Grand Am. They all left the VA quickly. Powell said he knows all three men, and described them. At the end of the interview he added "Doby isn't fat he's just real muscular."

Police Summary of Statement April 5, 2003, 11:20 a.m., Offense Report, pg. 2.195

Powell said he has known Dashan “Shon” Glaspie, Elijah “Ghetto” Joubert, Alfred Dewayne “Doby” Brown, and Ernest “Deuce” Matthews for about a decade. Matthews and Brown are similar in size but Matthews is darker. Powell said that on the day of the crime, April 3, 2003, he woke up at about 6:00 a.m. and rode his bike to the store to buy cigarettes. He rode back, and saw Glaspie and Joubert talking by Glaspie’s white Grand Am. He didn't see Brown. Powell talked to Amos Bass for a while, then went to Rayfael “Noonie” Viverette's apartment and hung out with a man named “Black” (real name unknown).

Powell rode around on his bike more, and saw Glaspie’s car still there with Glaspie and Joubert near it. He rode around more, and the car had left. He still had not seen Brown. He talked to Amos again. About 30 minutes later the car came

back. He saw Brown get out of the back driver's side behind Glaspie. He talked to Amos Bass again. Joubert was standing nearby. "They" were all acting like Glaspie was mad about something. Glaspie gave Powell some clothing and said to give it to Danta "DJ" Fontenette. Joubert walked towards the basketball courts. Brown went upstairs to "some apartment". Glaspie handed Powell a gun and told him to put it in Viverette's apartment. Powell went there and put it under the couch.

Powell came back outside, as Tonika Hutchins pulled up in a white Lumina. He rode his bike back toward Viverette's place when he saw Wilbert "Cowboy Will" Green pull up in a white Ford Ranger pickup. Brown walked up and asked Green for a ride. He jumped in the car and they drove off, following Glaspie's Lumina. Joubert was still there, waiting on his girlfriend and seemed upset.

Powell had been trying to get a ride "home" (to his girlfriend's house) all day. His girlfriend had called Viverette's apartment to tell Powell she was kicking him out. Powell went to his mom's house and napped until 4:00 p.m. or 5:30 p.m. He caught a ride to his girlfriend's house but doesn't remember from whom. [Side note: It is strange that he claimed (at the time) to remember such details about the day, but not who gave him a ride].

Grand Jury Testimony April 30, 2003, HC/BROWN-09160 (provided by County Attorney)

Powell said he lives at 8501 Broadway with one of his girlfriends (named "Dawn"). He said that he was afraid for his family because people at the VA were hostile to him. He said a man named Roger Williams called him a snitch.

He said that the day of the crime, April 3, 2003, he got up at around 6:00 a.m. or 6:30 a.m. in his mother's apartment, #129 in the Villa Americana. He rode his bike to the store to buy cigarettes. When he got back to the VA, he saw Dashan Glaspie and Elijah Joubert by Glaspie's white Pontiac Grand Am in front of Shekia and Lamarcus Colar's apartment, which was the gambling hang-out spot. Powell said that Glaspie and Joubert hang-out together a lot, and "come and go together." Ernest "Deuce" Matthews hangs out with them too, but doesn't "come and go" with them. He said that Glaspie and Joubert sell dope, and that Alfred Dewayne Brown doesn't. Powell said that Brown doesn't come around very often. Powell thought he saw Glaspie and Joubert around 7:15 a.m. They left the VA and came back 30 minutes later. Powell said Glaspie, Joubert and Brown were in the car. Powell admitted he had trouble with estimating times because he did drugs the night before,

and because he didn't go to bed until 4:00 a.m., only having two hours of sleep. Glaspie and Joubert got out of the car and started arguing, while Brown went to an upstairs apartment that Powell thinks is owned by a new girl, "some friend of Stefon." He said he didn't know her but knew it wasn't Sharhonda Simon's house (Note: people at the VA often call apartments "houses") because she lives somewhere else. Powell said Brown had all kinds of guns, including a 9MM and a .380ACP. Powell said "everyone" had .380's, that there were a bunch of them around.

Glaspie passed Powell a sweater, and Powell passed it to "Little DJ" (Danta Fontenette), who put it in the Colar apartment. Glaspie handed Powell a .45ACP handgun and told him to put it in Rayfael "Noonie" Viverette's apartment. Powell put the gun in Viverette's apartment. He walked outside and saw Wilbert "Cowboy Will" Green, who was pulling up. Green asked Powell if he knew where to get any "pills," looking for "handlebars" (Xanax). Brown walked up, coming from the direction of the girl's apartment and asked Green for a ride in exchange for money. Green agreed and they drove off. That was the last Powell saw of Brown that day.

Glaspie's girlfriend pulled up in Glaspie's Lumina and Glaspie got in and they drove away. At first Powell thought that Brown rode off with them, but then he thought about it and remembered that Brown left with Wilbert Green. Powell went to Rayfael "Noonie" Viverette's house. Viverette was asleep on the couch, his cousin was there, and so was a man named "Black." Powell claimed that he doesn't do hard drugs.

Trial Transcript (Joubert) October 5, 2004, Vol. 27, pg. 4

Powell admitted that he only remembered some of the day of the crime, because he was taking "handlebars" (Xanax) while drinking alcohol. He said that he was staying at Rayfael "Noonie" Viverette's house at the time. The morning of the crime, April 3, 2003, Powell left the Villa Americana on his bike to go buy cigarettes. When he came back, he saw Dashan "Shon" Glaspie (and only Glaspie) by two cars. He talked with Amos Bass and Danta "DJ" Fontenette, then he saw Elijah "Ghetto" Joubert walk up. He didn't see Alfred Dewayne "Doby" Brown until later.

Glaspie called him over and gave him his gun to put up, saying "Here, hold my gun, my girl be tripping if I don't." (Powell said he thinks it might be the same gun they have in the courtroom, but isn't sure.) Glaspie and Joubert argued and

Joubert walked off. Wilbert “Cowboy Will” Green picked up Brown. Powell took the gun to Viverette's apartment and put it under their couch. Viverette was asleep. Powell doesn't remember if Thomas “Muffin” Jolivette was there. He didn't see the gun again.

On cross-examination, Powell was read his April 5, 2003, statement. He claimed either to not remember most of the statements he is recorded as having made, or specifically disputed them, giving different information. For example, he said that he never saw Brown get out of the vehicle, just that he saw Joubert, Glaspie, and Brown walk from the direction of the vehicle. Thus, he was unable to place Brown inside the vehicle.

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 152

Powell said that he is 29 years old, single with two kids, and has convictions for domestic assault. He said that Dashan “Shon” Glaspie and Elijah “Ghetto” Joubert hung out together a lot, and that Alfred Dewayne “Doby” Brown didn't really hang out with them much.

Powell said he took Xanax and drank alcohol every day. He said that he blacks out and doesn't always remember what happens. He woke up around 6:30 a.m. on the day of the crime, April 3, 2003. He took some codeine, then rode his bike to the store to buy cigarettes. When he got back to the Villa Americana he saw Glaspie, Joubert, Amos Bass and Danta “DJ” Fontenette. Glaspie and Joubert were talking, and Bass and Fontenette were talking. He didn't see Alfred Dewayne “Doby” Brown at all in the morning. He didn't see him until the afternoon.

Glaspie and Joubert left in a car. He doesn't believe Brown was in the car. At some point the car came back, and he saw Glaspie and Joubert get out of the car. Glaspie gave him a .45ACP handgun, which he (now) recognized as the one they have in the courtroom. He never saw Brown get out of the car. He put Glaspie's gun under the couch in Rayfael “Noonie” Viverette's house. He doesn't remember if Thomas “Muffin” Jolivette was there or not.

Concerning Brown, Powell testified: "I walked on the porch. Then I seen Doby walk – Doby walked up to me, asked me – nah, he came in the house. He walked on the porch. I think we was just drinking." [Pg.170.] Powell told the court that then they were in the house watching something on TV with Wilbert “Cowboy Will” Green. He doesn't remember what. He said this was later, but he doesn't

remember when. Powell said that Brown asked Green for a ride home, and they got into a truck and left.

Powell said he knows Aaron “AB” Brown and his girlfriend Kishone Jefferson, as well as Brown’s mother Catherine “Mrs. Cat” Brown. He said he never talked to Alisha Hubbard about the crime.

Powell testified that he was stoned at the time of his first interview, but remembered that he talked to the police a long time before they turned on the recording device. Powell said that he was up until 4:00 a.m. the night before the crime, high on Xanax and alcohol.

Police Summary of Interview May 2, 2015, Re-Investigation Report, Supplement 13

Powell insisted that Elijah “Ghetto” Joubert gave him the .45ACP handgun, not Dashan “Shon” Glaspie. He didn’t remember Brown being at Rayfael “Noonie” Viverette’s apartment on the day of the crime. Instead, he only remembers Glaspie and Joubert there watching TV. Powell has trouble remembering even simple details of the investigation. To quote the police report “Both investigators, who have years of experience in dealing with reluctant witnesses, are not certain if Powell’s recollection has been damaged by years and years of hard drugs, or if he’s simply chosen to not participate in part two of the investigation into Alfred Brown.”

Analysis

George “Ju-Ju” Powell is both incompetent and uncooperative, making clear throughout the investigation that he wouldn’t give complete testimony even if he was able. Yet, somehow, he was called as a key witness in the trials of both Elijah Joubert and Alfred Dewayne Brown.

What is concerning is that Powell is the first witness to name Brown as a suspect. He was pulled, drunk and high, out of his bedroom in the middle of the night by the police on old domestic abuse charges. After hours of interrogation he named Brown as the third person to exit the car that Dashan Glaspie and Joubert used to escape the crime scene. Whether or not he actually believes that he saw this is unclear, but it is this statement which was used as the seed to begin the prosecution of Brown.

After Powell, it appears that many, if not all, other witnesses against Brown in this case had Brown's name suggested to them. Yet Powell, at one point or another on this timeline, remained consistent on virtually none of his original statements. First Powell said he saw Brown flee the VA in Glaspie's car, then he saw Brown meet Wilbert Green in the parking lot and leave in Green's truck, then he said he never saw Brown in the parking lot at all and only saw Brown and Green later that day in Rayfael Viverette's place, then finally he denied seeing Brown at all that day. It is hard to say whether Powell's incoherency is the determined strategy of a man evading police questioning, or the ramblings of a drug addict whose drugs of choice (Xanax mixed with alcohol) are specifically known for causing black-outs, or elements of both, but it is clear that he should have never been trusted to testify accurately in the first place.

**29. Latisha Price (aka “Natisha” and “Tish”)
(10950 Tanner Park Court #3503, Houston, Texas)**

Initial Statement to Police April 3, 2003, Offense Report, pg. 2.142

Price states that the morning of the crime, April 3, 2003, sometime around 7:30 a.m. she was with LaTonya Hubbard at the corner of Almeda-Genoa and Telephone Road, getting gas at the station next to a check cashing store. She went into the store to pay for gas and saw Dashan “Shon” Glaspie walking out of the store. She saw Elijah “Ghetto” Joubert inside of the store. She asked Joubert "Don't you belong in the Dead End?" (“Dead End” is slang for the VA). He told her that he wasn't from here, he was from California. She walked back to the pumps and saw Joubert pacing in front of the store. Glaspie was standing by the driver's side of the Grand Am. She thinks the hubcaps were missing on the driver's side of the car. She saw a third black male get out of the car and talk with the other two. He was about 6 feet tall and 170 pounds.

Price drove with LaTonya Hubbard to the ACE crime scene to make a statement, but it was very chaotic there and they left. Then they went to Lisa Hubbard's place at the Villa Americana. They then went to the police station.

Live Police Line-Up April 5, 2003, Offense Report, pg. 2.188

Price did not recognize Alfred Dewayne Brown, but did recognize Elijah Joubert and Dashan Glaspie. [Ernest “Deuce” Matthews, the third man identified by LaTonya Hubbard, was not placed in the line-up.]

Analysis

Latisha (also frequently called “Natisha” by investigators) Price was with LaTonya Hubbard at the gas station next to the first attempted robbery at another check cashing place. She actually spoke to one of the suspects, but was not called to testify at either trial. Lisa Hubbard said that this is because Latisha Price was afraid of the consequences of testifying, and Dan Rizzo did not force her onto the stand. (Houston Police Department Reinvestigation Report dated 4/29/15).

30. Tammie Yvonne Rodgers

(Villa Americana Apartments, 5901 Selinsky Road #22, Houston, Texas)

Statement to Police April 20, 2003, Offense Report, pg. 2.246

Rodgers stated that shortly before noon on the day of the crime, April 3, 2003, she was leaving her apartment to go to an eye doctor appointment when she saw Elijah "Ghetto T" Joubert walking in the parking lot. She spoke briefly with him before she left. She thought her sister Deborah Rodgers Blair may have let him use their phone.

Analysis

Tammie Rodgers helps corroborate her sister Deborah's testimony and helps to specify a time that they interacted with Elijah Joubert. Further, it is evidence that Joubert used landlines on the day of the murders even though he had a cell phone.

31. Vanan Saukam

Statements to Investigators April 11, 2003, Offense Report, pg. 2.234

Saukam was a customer of Leo Foisner who was present during the attempted robbery of the first check cashing service. He said he saw all three suspects when they were near the convenience store. He said one was tall and two were his height, around 5'8. (This is similar to the description by James Wheat). [Note: Glaspie is reportedly 6'5," and Joubert is 5'10." This description requires another, shorter man. However Alfred Dewayne Brown is 6'2." Ernest "Deuce" Matthews is 5'7" and Jero Dorthy is 5'11."]

Video Line-up April 11, 2003, Offense Report, pg. 2.234, HC/BROWN-06703 (provided by County Attorney)

Saukam didn't ID anyone in line-up, but said both Glaspie and Brown had the height to be "the tall guy."

Analysis

Vanan Saukam, who throughout the investigation and trial is only referred to as "Leo Foisner's Asian customer," witnessed all three suspects near the attempted robbery of the first Check Cashing store. He stated that one of them was noticeably taller than the other two. This, along with the testimony of Sheikah Afzal (who saw one tall man and one shorter man (who was not Joubert)) together with the testimony of James Wheat, shows that there was a height disparity between one of the parties to the crime and the other two. This casts doubt on Alfred Dewayne Brown's involvement, who is around the same height as Dashan Glaspie.

32. Sharhonda Marie Simon

(Villa Americana Apartments, 5901 Selinsky Road #79, Houston, Texas)

Police Summary of Statement to Police April 4, 2003, Offense Report, pg. 2.126

Simon stated that she doesn't know the last time Alfred Dewayne "Doby" Brown was at her apartment. Around 10:30 a.m. on the morning on the day of the crime, she saw him sitting in a white Grand Am near Dashan Glaspie and Elijah Joubert.

Witness Statement to Police April 8, 2003, HC/BROWN-07518 (provided by County Attorney)

Simon stated that she was 24 years old and has a child with Alfred Dewayne Brown. In January of 2003 Brown got into a confrontation with her current boyfriend, Derrick Ray Brown, who revealed to her that he had a small chrome handgun so he was ready for a fight.

On the morning of the crime, April 3, 2003, between 11:00 a.m. and 12:00 noon, Simon saw someone who she thought was Alfred Dewayne Brown sitting in a white Grand Am near two people she thought were Elijah "Ghetto" Joubert and Dashan "Ghetto" Glaspie. There were a few other people around the car that she did not recognize.

Trial Testimony (Brown) October 12, 2005, Vol. 30, page 65

Simon said that her April 8, 2003 statement was not true because she did, in fact, actually see Alfred Dewayne Brown in the car with Dashan Glaspie and Elijah Joubert. She said she didn't want to become involved in the trial so she downplayed her testimony. She admitted that she didn't want to be on the stand and was only there so that she didn't cause trouble for her children.

Affidavit October 20, 2003* [date must be a typographical error] (provided by Brown's counsel, Tab 10)

Simon said that she initially told police that she saw three men around a white Grand Am in the parking lot of the VA the morning of the crime. She was over a football field away from the car when she saw this. She told the police that it looked like Alfred Dewayne Brown in the passenger seat of the car, but she really couldn't identify him, she just assumed it was him. She felt pressured by ADA Dan Rizzo to say she was sure it was Alfred Dewayne Brown in the car, and she went along with it because she didn't want to go to jail or lose her children.

Interview May 20, 2015, Re-Investigation Report, Supplement 15

Simon said that Alfred Dewayne "Doby" Brown was with her from 9:00 a.m. until 10:30 a.m. in the morning on the day of the crime. Afterwards, when she and Brown were standing outside, Dashan "Shon" Glaspie walked up to them and started talking with them. Brown walked away with Glaspie.

Analysis

Sharhonda Simon was one of the first people associated with Alfred Dewayne Brown (she is the mother of his child) that the police were able to contact in their investigation. After they created his arrest warrant, they discovered that he was listed in a previous offense report in which Simon reported that Brown had slapped her. Police interviewed her. It was through Simon that they discovered the name and location of Ericka Dockery, which led to Brown's arrest.

Simon's testimony is confusing because her first statement was that she didn't know the last time she hung out with Brown, but that she might have seen him in the parking lot, and her latest statement was that she spent the morning with Brown until he ran into Dashan Glaspie at 10:30 a.m. The latest statement is not only wholly contradictory, but if taken at face value, constitutes an alibi. Simon was used as a state witness at trial because her testimony (at that time), as the mother of Brown's child, held emotional weight, and because it helped give support to Glaspie's timeline which placed Brown in her apartment at the VA around 8:45 a.m. in the morning, as an explanation for why Glaspie called Simon's apartment at 8:45 a.m. However, her initial statements are contra to this explanation, and her trial testimony

makes clear that she only said what she thought she had to say in order to protect her children.

33. Kelvin Smith

(Lived at the Villa Americana Apartments at the time of the crime)

Interview April 27, 2015, Re-Investigation Report, Supplement 4.2

Smith stated that on the day of the crime he heard a commotion outside his upstairs apartment. He went outside and heard Dashan "Shon" Glaspie, who was below him on the first floor say "I had to shoot the bitch" repeatedly. Smith said that Glaspie seemed "fucked up."

Analysis

Kelvin Smith is one of three witnesses (including Lamarcus Colar and Richard Carraway) who heard Dashan Glaspie confessing to having murdered Alfredia Jones, and one of many witnesses who observed Glaspie as distraught after the crime.

34. Rayfael Viverette (aka “Noonie”)
(Villa Americana Apartments, 5901 Selinsky Road #157, Houston, Texas)

Initial Statement to Police April 4, 2003, Offense Report, pg. 2.084

Viverette said he was 22 years old, and lived at apartment #157 in the Villa Americana. On the day of the crime, Thursday, April 3, 2003, he got home between 3:30 p.m. and 4:00 p.m. His cousin Thomas “Muffin” Jolivette was there, he told him that George “Ju-Ju” Powell had come by and given Jolivette a gun. The gun was under the seat of his couch and was a .45 automatic with a red laser sight. Jolivette told him that Powell had asked him to hold the gun, and that he'd be back for it later. Viverette carried the gun around the VA, eventually going to the apartment of Letisha “Tish” Simmons, #188. Simmons doesn't like guns in her house but he convinced her to let him in.

Trial Testimony (Brown) October 12, 2005, Vol. 30, pg. 83

Viverette said that he was 24 years old, single, with one child. At the time of the trial he was in jail for possession of PCP. The day of the crime, April 3, 2003, when it was about dark, he went to the store to buy beer. When he got home, his cousin Thomas “Muffin” Jolivette was cooking. The two of them began to drink, and Jolivette showed him a gun. (Viverette identified it in court as the same one used in the crime). Viverette stuck the gun in his pants and walked around the VA, first going to Letisha “Tish” Simmons' apartment. He called Jolivette, who was drunk and stoned in his van. The two of them passed out in Simmons' apartment.

The next day the VA was swarming with police. Viverette became scared, put the gun in a plastic bag with some cans, and threw it out the window. Then he went outside and the police detained him, patted him down, and put him in a police car. He told the police where he threw the gun, but when they got there the gun was gone. Later he found out that Laturischeva “Pebbles” Holmes had taken it.

Viverette knows Alfred Dewayne “Doby” Brown. On the day of the crime, mid-morning, about 10:00 a.m., he did not get visited by any of the suspects, or see them at all. Brown did not come to his apartment that morning. Viverette said that he was drinking heavily that day, a few six-packs. He said he was home all day and he didn't remember seeing George “Ju-Ju” Powell in his house that day.

Latest Statement to Investigators May 1, 2015, Re-Investigation Report, Supplement 13.7, Audio Disc (provided by HPD)

Viverette said that Dashan “Shon” Glaspie and Elijah “Ghetto” Joubert came over to his apartment the morning of the crime to watch the news. He didn't remember them saying anything in particular. They watched the news while he took a shower. At first it was just him, Joubert, Glaspie and Viverette's daughter. Then Glaspie and Joubert left and Thomas “Muffin” Jolivet came over. Viverette went to the store and George “Ju-Ju” Powell came over and sold Jolivet the .45ACP handgun used in the crime. Viverette came back and took the gun from Jolivet.

Alfred Dewayne Brown came over in the evening and they shot dice. Jolivet was inside. Viverette and Brown were outside talking. Then Brown "burned off" alone. They never talked about the crime. Viverette didn't even know about it until the next day.

About 4 hours after Brown left, Viverette saw a lot of police at the VA. He and Jolivet jumped out his back window to hide in Letisha “Tish” Simmons' apartment. The next morning he was arrested. He said he knew who Wilbert “Cowboy Will” Green was but didn't see him that day. Viverette didn't remember anyone named “Skip.” He didn't understand why Green would go to his apartment, because Green "doesn't like the smell of what he sells" so wouldn't have “chilled there.” Viverette knew Jero Dorty.

Viverette said that his impression was that Brown didn't do it, knowing him a long time. He knew Joubert and Glaspie a long time, and thought that they did do it, but not Brown. He said Joubert was a real tough character. His mom put cigarettes out on him when he was younger, he stole food just to eat, and would get in fights and threaten to kill people as early as age 9. Glaspie was a real gun nut. He had a whole bunch of guns and even a grenade launcher. Viverette asked the investigators if they were sure it was three people and not just two.

Analysis

Rayfael Viverette is an interesting witness. He was brought into the case initially because he handled the handgun likely used to murder Alfredia Jones. He forms a link between the .45ACP Heckler & Koch handgun present in the courtroom which ballistically matches the one used in the murder, and George “Ju-Ju” Powell, who testified to getting the handgun from Dashan Glaspie.

Viverette's testimony grew in importance to police after Wilbert "Cowboy Will" Green said that he saw Alfred Dewayne Brown in Viverette's apartment on the day of the crime. George Powell did not mention Viverette until his fourth telling of the events of the day. Powell's first two statements to police, and his testimony at Elijah Joubert's trial, made no mention of Viverette. Viverette, similarly, made no mention of Brown in his first statement. Critically, Viverette specifically testified at Brown's trial that he did not see Brown at all that day. Viverette further testified at Brown's trial that he did not see Glaspie or Joubert that day. Yet, in 2015, Viverette told police that Glaspie and Joubert were in his house that morning, and that Brown came to his house alone later that evening, around dark. He denied that Wilbert Green was ever present.

Viverette's claim that Brown was in his apartment the evening after the crime took place is not testimony of Brown's presence in the morning, and is invalidated by Viverette's contradictory testimony on the witness stand at Brown's trial that he did not see Brown at all that day.

35. Kenneth Walden

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 9

Walden saw a white Pontiac, possibly a Grand Am, backed in to a parking spot near the donut shop next to Leo Foisner's store, with three black males inside. Two were in the front and one was in the back.

Analysis

Kenneth Walden is a straightforward witness who provides further solidity to the fact that three black men, with one car, were involved in the attempted robbery of Leo Foisner.

36. James Wheat

911 Call April 3, 2003, Dispatch Tape, HC/BROWN-23430 (provided by County Attorney)

Wheat told 911 dispatchers that he saw three black men flee the crime scene in a white four-door Pontiac Grand Am.

Statement to Police April 4, 2003, 3:45 p.m., Offense Report, pg. 2.150, HC/BROWN-06419 (provided by County Attorney)

Wheat was following Officer Charles Clark to pick up a disabled vehicle when they got the call that there was a robbery in progress. They re-directed their route to that location. When they arrived at the scene, Wheat noticed a white Pontiac in the parking lot a few spaces west of the front of the ACE check cashing store. He saw Officer Clark exit his vehicle and go up to the store, and heard him tell the dispatchers "They have guns – step it up" on his scanner. Wheat was distracted for a second and didn't hear or see the gunshots, but then saw Officer Clark on the ground and three black males leaving the ACE location going toward a white Grand Am. One tall suspect entered the car on the right side and two shorter men entered from the left side. The vehicle backed up and left the parking lot going eastward on the service road. Wheat exited his car, ran up to check on Officer Clark, and used Officer Clark's microphone to notify the dispatcher of the fallen officer.

Line-Up April 5, 2003, Offense Report, pg. 2.188

Wheat did not recognize Alfred Dewayne Brown in a line-up, and also did not recognize Elijah Joubert. He positively recognized Dashan Glaspie. [Ernest "Deuce" Matthews was not in the line-up.]

Trial Testimony (Brown) October 11, 2005, Vol. 29, pg. 42

Wheat stated that he is 47 years old and drives a wrecker. He said that at about 9:30 a.m. in the morning on the day of the crime, April 3, 2003, he was working as a wrecker driver, en route to check out an illegally parked vehicle with Officer Charles Clark, whom he knew. On the way there, a dispatch call came out for a

hold-up in progress. The call wasn't for Officer Clark, but he volunteered to take it because he was in the vicinity.

Wheat followed Officer Clark to the scene a few car lengths behind, and parked on the west side of the parking lot. He saw a white Pontiac Grand Am and a red car (belonging to Alfredia Jones) in the parking lot near the check cashing place. Officer Clark got out of his vehicle, went up to the building and peeked in. Officer Clark said "Step it up, they have guns" on the dispatch.

Wheat was distracted for a moment and did not hear gunshots. Then he saw three black men leaving the ACE location. They came out bent over, running, one after the other. They all got into the white Grand Am, which pulled out and left. He went up to the store and saw Officer Clark on the ground, and used Clark's radio to call in that an officer was down. He then went into the store and saw a woman in a puddle of blood. He was asked during trial to listen to his 911 call, and recalls that he saw one tall man and two shorter men, and that the tall man ran out first.

Wheat agreed with ADA Dan Rizzo on re-direct examination that he was 50-60 feet from the store and was trying to focus on the license plate, not their heights. [Note: ADA Rizzo was aware of the height issue (see V, E. in this report) and tried to make it less important.]

Analysis

James Wheat is the only witness who is able to place three black men (in one car) at the scene of the crime, and re-construct events that happened outside of ACE Check Cashing during and immediately after, the crime. Without his presence it would have been very difficult for investigators to make progress in this case, as the store had no video cameras. Wheat's identification of the white Pontiac Grand Am with three black male occupants led to Latisha Price and the Hubbard sisters' identification of Dashan Glaspie and Elijah Joubert as two of the three suspects, and the identification of George Powell as a man with information, which informed the rest of the investigation. Wheat did not identify Alfred Dewayne Brown or Joubert in the line-up, though he did positively identify Glaspie. He plainly stated that one tall man and two shorter men fled the crime. This is an important detail because both Brown and Glaspie are tall. This fact was downplayed by the prosecution, and the defense did not focus on it.

Standing alone, Wheat's testimony about height might not have much probative value, as exact details in witness identification testimonies are sometimes unreliable. However, the comparison of the heights of the suspects (one tall, two shorter) was corroborated by two other witnesses to the suspects' activities on the day of the crime.

One such witness is Vanan Saukam, a man who throughout most of the investigation was referred to as Leo Foisner's "Asian costumer." Saukam saw all three suspects near the gas station next to Foisner's store, and remembers that one was tall and the other two were shorter.

The other witness is Sheikah Mohammed Afzal, whose initial statement was that one tall and one shorter man entered his store. Since it is known that Elijah Joubert, who did not enter the furniture store, is much shorter than Glaspie, this corroborates that one tall man and two shorter men committed the crime. [Note: Glaspie admitted that he was the tall man who spoke with Afzal.] Since Glaspie is reportedly 6'5", and Brown is also tall (6'2"), this strongly implies that the third accomplice was Joubert's height 5'11" or shorter (as are Aaron "AB" Brown 5'6", Ernest "Deuce" Matthews 5'9", and Jero Dorty 5'11").

37. Ladon Williams

Interview May 21, 2015, Re-Investigation Report, Supplement 16.6

Investigators reported Williams as being "very manipulative" during the interview. Williams said that it was Joubert who shot Todd Williams and who should be in prison for it, not Williams. He agreed that Alfred Dewayne Brown did robberies with Glaspie and Joubert, and said Brown had a .380ACP handgun that he used in a gunfight.

Analysis

Ladon Williams was an active criminal associated with Joubert. His only contribution is the statement that Alfred Dewayne Brown owned a .380ACP handgun (the same caliber as used to kill Officer Charles Clark) and that Brown had used it before in a gunfight. [Note: This is an inexpensive gun. George Powell said that there were many .380s at the VA.]

38. Patricia Ann Williams

(Villa Americana Apartments, 5901 Selinsky Road #244, Houston, Texas)

Initial Statement to Police April 9, 2003, Offense Report, pg. 2.230

Williams stated that she was 25 years old, and lives in apartment #244 in the Villa Americana. She confirmed her phone number. On the morning of the crime, April 3, 2003, she got up at 9:00 a.m. to get ready to go to school at Houston Community College. Shortly after 10:00 a.m. she walked out of her apartment, and walked down her stairs toward her car. She saw two men, Dashan "Shon" Glaspie and Elijah "Ghetto" Joubert, standing by a white Pontiac Grand Am. Joubert paid her \$20 for permission to go into her apartment. He had given her money for this purpose in the past. She noticed both were acting unusual. The two men came into her apartment and started watching TV, watching news coverage about a robbery and shooting. They watched TV while she went into the bedroom.

Williams was in a hurry to get to school. They asked her to leave her keys but she told them no. They left the apartment. Then she left and walked to her car. She saw the white Grand Am parked in the parking lot. She was shown photos of Glaspie and Joubert and recognized them as the men who came in that day. She was shown a photo of Alfred Dewayne Brown and did not recognize him. See also OR 2, 273. Her house was searched and nothing was revealed.

Second Statement to Police May 2, 2003, Offense Report, pg. 2.273

Williams stated that on the morning of the crime, April 3, 2003, around 10:00 a.m., she was leaving for school when she saw Glaspie and Joubert next to a white car in the parking lot of the VA. Joubert asked to come upstairs and said he would give her some money if she let them. Joubert and Glaspie came upstairs and put the news on the TV. She went into her room. When she came out they were gone. She didn't see them leave the apartment and didn't know where they went. She does not know Alfred Dewayne Brown.

Police Summary of Third Statement to Police January 14, 2004, Offense Report, pg. 2.310

Williams stated that only Dashan "Shon" Glaspie and Elijah "Ghetto" Joubert came to her apartment to watch television. Joubert approached her first outside the apartment as she prepared to leave for class. When she told him she had to leave, he offered her \$20 for gas money for her car. She accepted and let Joubert and Glaspie inside.

She went to the back room for a moment and then told Joubert and Glaspie that she had to leave for class. Joubert and Glaspie left and then she left for class. She didn't remember if they had anything with them when they came. She said she did not know Alfred Dewayne "Doby" Brown. When police pressed harder, she said she did not remember Brown. She admitted to making statements in the jail about the case but reiterated that she did not know Alfred Dewayne Brown. She admitted to knowing Aaron "AB" Brown. Investigators told her they believed she was being untruthful, to which she said that she had nothing more to say and asked to be taken home.

Statement to Defense Team December 9, 2008 (provided by Brown's counsel, Tab 6)

Williams stated that she was on her way to school when she saw two men, Elijah Joubert and Dashan Glaspie, get out of a white Grand Am. Joubert asked if he could watch TV in her place, which is something they had done before. She initially refused because she had to get to school, but Joubert offered her \$20 for gas money for her car. They went into the house to watch the news about the crime. Joubert used her landline, taking the receiver to her couch to watch while he used it. Glaspie paced around the room.

After 10 or 15 minutes she told them she had to go to school. They asked if she could leave her key and she refused. They left the apartment and she did not see where they went. They arrived and left empty handed. She did not see Alfred Dewayne "Doby" Brown with them. She (now) knows that "Doby" is Alfred Dewayne Brown, but did not see him at all that day. She was shown a picture of Brown and did not recognize him and said she has never seen him before.

When Williams was with Ericka Dockery in jail in the fall of 2003 she said "them was my homeboys" in reference to Glaspie and Joubert, not in reference to

Brown. She never said the name “Doby.” Williams denied telling Dockery she had seen the guns and bloody clothing. She did not go by the nickname “Shondo.” Brown was not at her house on the day of the crime. She gave multiple statements, but was never asked to testify or approached by Brown's team.

Fourth Statement to Police May 13, 2015, Audio Disc (provided by HPD)

Williams said that her apartment was #244 in the VA. The morning of the crime, April 3, 2003, she was on her way to school, leaving her apartment when some men approached her asking if she needed money for gas, and asking to come into her apartment. This was before 10:30 a.m., because that’s when her classes start. The two men were Dashan “Shon” Glaspie and Elijah “Ghetto” Joubert. Williams identified their photographs. The two men drove up in a white four door car. The two men came inside. Glaspie locked the door while she went to the balcony. They were inside watching breaking TV news about the crime. She was ready to go. Glaspie asked her about her TV – where she got it. Then they both left. They had come over before to play her Xbox and watch her TV. She thinks they used her phone. She isn't sure they did, but they usually used her phone when they came over. It was only two people, no more.

She met Ericka Dockery in jail. The case was on TV at the time. Williams said the guys were in her apartment and Dockery began to cry. She said that her nickname was not Shondo. She went by "Pat" or "Tricia."

When Williams was shown a photo of Alfred Dewayne Brown she said she didn't know him, just his brother Aaron “AB” Brown. She remembered the 2008 interview she had with the defense team, and said it was her signature on the document. She said she was pretty sure someone used her phone that morning, that she was confident someone used her phone. She had only been living in the VA a few months before the crime.

Analysis

Patricia Williams is (along with alibi witness Reginald Jones) one of the two most consistent witnesses in this case. She is crucial for responding to Dashan Glaspie’s timeline. A call from William’s apartment to Ericka Dockery’s apartment happened at 10:07 a.m. on the morning of the crime. A call from Dockery’s apartment to Dockery’s place of employment (Alma Berry) happened at 10:08 a.m. Alfred Dewayne Brown was on the phone call to Alma Berry’s house, according to

testimonies of both Alma Berry and Dockery. The two calls overlap, and were likely linked as a three-way call.

Critically, Williams has always maintained that Brown was not in her apartment at the time of the phone call from there. Brown was, however, on the phone call to Alma Berry. If Williams' testimony is truthful (and she has no known bias for or against Brown), Brown must have been in Dockery's apartment at the time of the call.

This fact, if true, completely invalidates Glaspie's testimony that he brought Brown back to the VA with him.

The crime ended at 9:46 a.m. There was only one "get-away car." There was insufficient time for Brown to drive with Glaspie and Joubert to the VA, then make his way back to Dockery's apartment in time to be on the 10:07 a.m. phone call. Similarly, there was not enough time for Glaspie to drop Brown off at Dockery's apartment and then drive to the VA in order to call Brown from Williams' apartment at the VA. Both scenarios are not only completely counter to Glaspie's testimony, they are not logistically possible. Williams has maintained a straightforward, consistent story, through 5 different statements over 12 years, and presents solid evidence that Brown was not present at the crime scene.

VII. JAILHOUSE WITNESSES

Two individuals have written letters to DA Ogg offering testimony against Brown. The witnesses have asked to remain anonymous.

Witness A

Witness A was sentenced to death row for capital murder in December 2003. He is a white male incarcerated at the Polunsky Unit in Livingston, Texas, born in 1966. Both Brown and Joubert spent time at the Polunsky Unit. Witness A has written multiple letters claiming to have information relevant to Brown's case.

Death row at the Polunsky Unit consists of six Pods (A-F). Each Pod has six sections, and every section has 14 cells. There are a total of 84 cells per Pod. Of the 14 cells in each section, there are 7 cells on top and 7 cells on the bottom. Only inmates in the same section of a Pod are located in cells proximate to one another. Each section of a Pod has a dayroom and four outside yards. Each inmate is allowed two hours per day to go into the dayroom or outside yard. The dayroom is located in close proximity to the cells and it is quite difficult to have a private conversation without being overheard.

Brown and Witness A were on the same death row "pod" only from December 2007 until June 2009. Brown was in the Harris County Jail from April 12, 2013-June 5, 2013 for the *Brady* hearing. He was returned to Polunsky from June 5, 2013 to December 1, 2014.¹⁴ Brown left Polunsky on December 1, 2014. He was held in Harris County Jail from December 1, 2014 until his release on June 8, 2015.

On February 22, 2016, Brown filed for compensation with the State of Texas Comptroller. This was reported in the Houston Chronicle and on local news.

On February 23, 2016, Witness A wrote to Ellen Stewart-Klein at the Attorney General's Office. He stated: "About a year and a half ago a case had a Brady hearing out of Houston. The person got some action. This person came back and came to my day room and told me 'I did not make the call.'" Witness A's letter states that the person "lived on my pod." In Witness A's letter he claims that the day before,

¹⁴ Joubert and Witness A have been on the same death row "Pod" four times for brief periods each time: June 9-August 8, 2010; August 9-November 22, 2011; August 3-October 5, 2012 and October 22-December 3, 2012. They were only in the same section once, from October 22 to December 3, 2012.

he overheard someone else state from their cell: “They will not pay him, because the witness saw him there. She can identify him, he was with us.” The letter says that this statement was overheard after the 4:00 p.m. news reported Brown’s application for compensation.

Contrary to Witness A’s statement about what Brown allegedly told him, Brown and Witness A were not in the same pod or section when Brown returned from the *Brady* hearing in June 2013. Because they were not in the same section, Brown and Witness A would not have been in the dayroom together at any point during the six months Brown was at Polunsky before being transferred to Harris County Jail. The alleged conversation with Brown could not have occurred as reported by Witness A.

Regarding the alleged overheard conversation, Witness A and Joubert were not in the same section in February 2016 and Joubert’s cell was not located in the proximity of Witness A’s cell. Therefore, Joubert could not have been the alleged speaker.

On May 8, 2018, Harris County filed a Motion to Dismiss Brown’s civil suit. The County’s motion outlined its theory that the 10:07 a.m./10:08 a.m. phone call was a three-way call and that someone at Dockery’s house assisted in making that call. The County’s motion was reported in the Chronicle and on local news stations. The motion, a public record, references Ericka Dockery’s nephews Reginald and Ruben Jones as possible facilitators. A computer with internet is available to inmates.

On May 12, 2018, Witness A wrote to DA Ogg that Brown told him Dockery’s “sons or nephews” were at the house and made the call. He requested the DA’s complete file on his case as well as documents responsive to an open records request filed by one of his attorneys.

On May 13, 2018, Witness A wrote to DA Ogg “IF Dobie would not of told me out of his own mouth and IF Ghetto would not of told me that Dobie was with him, I would not be writing this letter.” He claimed he was not coming forward in hopes of a “deal” but wanted his complete file so he could prove his innocence.

On August 4, 2018, Witness A wrote to DA Ogg as follows: “So, if you do not bring me out by Sunday August 12, 2018. I am sending all of this out to the media and I am WITHDRAWING my willingness to help on that day August 12,

2018. I will tell the media that I wanted to help, but I am no longer going to and will not talk to ANY Law Enforcement after that day. (Capitals in original).

On August 15, 2018, Witness A wrote to Joe Gamaldi with the Houston Police Officers Union stating: “One of the Killers told me ‘if this person come forward it would blow this case open.’ That person is a OLD LADY and it would break this wide open and more and I know a WHOLE LOT MORE.” He again asked for his complete DA file and the documents requested in the open records request.

On September 15, 2018, Witness A wrote to DA Ogg and mentioned a Houston Chronicle article he read on September 7, 2018 regarding Joubert. He stated that “both of these men have admitted that they were there and did the killing.” He also offered to provide information on 7 murders and 3 murderers “on the streets.” The three-page letter continued with a detailed request for his file and an explanation for why he believes he is innocent.

On September 16, 2018, Witness A wrote to Mr. Gamaldi again. He stated “I have been told by both Alfred Brown and Elijah Joubert that Brown shot Officer Clark.”

On September 16, 2018, Witness A also wrote to Harris County Attorney Vince Ryan. He stated: “BOTH Brown and Joubert have told me that Brown Killed Officer Clark and Joubert killed the Clerk Jones. Brown told me that he did not make the call to his Girlfriends work it was the (2) Boys that were there at the house, but Ghetto told someone else here something different and that person told me.” He also stated “Brown is going to give Joubert money out of the 2 Million. There were (5) of us that had a conversation on the day that Brown filed for the money and he Ghetto told us a lot.” He referenced a KPFT Radio station prison show that he listens to where Brown was interviewed in February 2016. Witness A finished the letter asking for a \$100,000 crime stoppers reward for the information he had provided.

Witness A and Joubert were not in the same pod or section in February 2016 when Brown’s request for compensation was filed, so they would not have been in a position to discuss Brown’s request or for Witness A to “overhear” Joubert commenting on Brown’s involvement in the crime. It is possible, given the configuration of the outside yards, that Joubert and Witness A spoke when outside, but it is unlikely Joubert would have confided in someone through a fence that he did not interact with regularly.

Witness A's letters reference Houston Chronicle articles and a prison radio show, both of which reported in detail on the Brown case. The information in Witness A's letters was widely available to the public through media and public filings prior to his disclosure. Witness A and Brown were only in proximity to one another from December 2007 to June 2009. After that, he and Brown were not in the same pod and would not have had the opportunity to interact as Witness A claims. Witness A says Brown told him in June 2013 that he did not make the call. In Witness A's own version of the story, he waited three years – until February 23, 2016 – one day *after* Brown's request for compensation was widely reported in the media, to come forward (also requesting documents and even monetary payment). Witness A made no reference to a possible three-way call until *after* the County's motion to dismiss was filed and reported by the media.

Two HPD detectives and I recently met with Witness A at the Polunsky Unit. He was highly irrational, with rapid, deeply emotional mood swings. He plainly spends much of his spare time doing internet research, saying that he does "legal work" for the other inmates. He demanded "immunity" for talking to us, which was denied. He said "I'm getting out...I'm putting together a writ to dismiss my conviction." He did not provide any useful information regarding the Brown case.

Witness B

Witness B was arrested in January 2016 for providing false reports to a police officer in reference to the murder of a Harris County Sheriff's deputy.

Witness B provided an oral statement to Houston Police while at the Baker Street Jail on May 22, 2018. Witness B claims he met Brown in early 2015 when he was in jail waiting to testify in a murder case. (Brown was at the Harris County jail from April 12, 2013 to June 5, 2013 and again from December 1, 2014 until his release on June 8, 2015.) Witness B claims Brown told him in early 2015 that he was going to get out because he had an alibi in his girlfriend. He also stated that in 2017 he ran into Brown again at a dance club and Brown told him he was released because his girlfriend lied for him.

Ericka Dockery did not provide an alibi to Brown. She was the State's chief trial witness against Brown. In 2017, when Brown was released, Brown was undoubtedly aware that his release was due to the fact that the State had withheld exculpatory phone records, and not an "alibi" that Dockery did not even provide.

Analysis

Witness A and Witness B have significant credibility issues.

Immediately after seeing Brown's case on TV, Witness A (a white male on death row) wrote his first letter claiming Brown confessed to him. However, the time and place of the alleged confession is highly unlikely. The two men were not even in the same pod, let alone section, during that time. Witness A makes many demands for his cooperation, including his complete file so that he can work on his case and a \$100,000 reward for his information against Brown. He threatens the Harris County DA that he will go to the media and no longer "help" her if she will not yield to his demands by a certain date. Later, he forgot this ultimatum and continued to write more letters. An in-person interview confirmed that he is not a viable witness.

Witness B, who has a lengthy criminal record of multiple assaults (including, most recently, choking his girlfriend and punching her repeatedly in the face) told police he was making his report in this case because he is opposed to violence. His 2016 "false report to police officer" charge is notable: "Defendant has made continuous false reports/tips in reference to the murder of HCSO Deputy (name withheld). Defendant started this in 1992 and has continued through the current date...Defendant's actions have wasted a lot of man hours and have impeded the homicide investigation numerous times." Harris Co. Dist. Clerk Website. According to Witness B, Brown said that the reason he was released was because Brown's girlfriend lied to give him an alibi. This is, of course, incorrect.

Witness A and Witness B do not affect the above case analysis.